

ELECTION LAWS REVISION COMMISSION



FINAL REPORT TO THE
2001 SESSION OF THE
2001 GENERAL ASSEMBLY
OF NORTH CAROLINA

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1999-2000

MEMBERSHIP

ELECTION LAWS REVISION COMMISSION

Appointees of the President Pro Tempore of the Senate	Appointees of the Speaker of the House	Appointees of the Governor	Ex Officio Members
Senator Wib Gulley, Co-Chair	Representative Donald A. Bonner, Co-Chair		
Senator Fletcher L. Hartsell	Representative Martha B. Alexander	Michael Crowell, Attorney at Law.	Larry Leake, Chair, State Board of Elections
Douglas R. Holbrook Jr., Secretary, Wake County Board of Elections	Representative Art Pope	Ronald A. Gregory, Member, Durham County Board of Elections	Gary O. Bartlett, Executive Secretary- Director, State Board of Elections
Deborah K. Ross, Legal Director, North Carolina Civil Liberties Union	Judy Caudill, Election Director of Lincoln County	Atlas Price Jr., Chair, Wayne County Board of Commissioners	Barbara Allen, Chair, State Democratic Party
		June K. Youngblood, Member, State Board of Elections	William Cobey, Chair, State Republican Party
			Candice Copas, Chair, State Libertarian Party

Staff: William R. Gilkeson, Gerry F. Cohen, Marilyn Chism, Erika Churchill

Clerks: Phyllis Cameron, Lucy Johnson

PREFACE

The Election Laws Revision Commission was established by Part III of Session Law 1999-395. The Commission's charge was augmented in Part III of Session Law 2000-138. Relevant excerpts of the authorizing legislation are included at *Appendix A*.

Among the Commission's duties are studying certain specified topics and preparing and recommending a comprehensive revision of the election laws of North Carolina. The Commission was directed to submit a final written report on or before the convening of the 2001 General Assembly. It was also given the choice of submitting a report to the 2000 Regular Session of the 1999 General Assembly. That interim report was submitted in May 2000. This report is submitted pursuant to the Commission's authority to submit a final report to the 2001 Session.

A committee notebook containing the committee minutes and all information presented to the committee is filed in the Legislative Library.

COMMITTEE PROCEEDINGS

The Election Laws Revision Commission held seven meetings. Three occurred prior to the 2000 Session of the 1999 General Assembly, and four occurred during the interim after the 2000 Session of the 1999 General Assembly.

On March 1, 2000, the Commission held an organizational meeting. The members heard two background presentations. William R. Gilkeson, Staff Co-Counsel, described the legislation concerning election laws enacted by the 1999 General Assembly. Susan Nichols, Deputy Attorney General, reported on election-law litigation. The Co-Chairs, noting the Commission's charge to consider recodification of the election laws, appointed a Subcommittee to begin the task. The Subcommittee was chaired by Michael Crowell, and five others were appointed as members: Senator Fletcher L. Hartsell, Representative Martha B. Alexander, Gary O. Bartlett, Ronald A. Gregory, and Judy Caudill.

At its second meeting, held March 21, 2000, the Commission studied the topics of enforcement of campaign laws, no-excuse absentee voting, and municipal boards of elections. The enforcement topic was addressed by three District Attorneys, Belinda Foster, Colon Willoughby, and Thomas Keith; by Mr. Bartlett; and by Bob Hall, research director for Democracy South. All described problems in the current law that make enforcement difficult. The absentee voting topic was addressed by Representative Larry Justus, who spoke against removing the current excuse requirement. Representative Martin Nesbitt, was to speak in favor of removing the current excuse requirement, but was unable to attend. The topic of municipal boards of elections was addressed by Mr. Leake; Ellis Hankins, executive director of the League of Municipalities; and Steve Settlemyre, City Attorney of Morganton. Mr. Leake presented the case for the abolition of municipal boards of elections, and Mr. Settlemyre spoke opposing the abolition of the Morganton Board of Elections. (See *Appendix B* for a listing of the names and

populations of the 52 cities in North Carolina that conduct their own city elections using municipal boards of elections.)

At its third meeting, held April 13, 2000, the Commission studied the following topics: conduct by board of elections members, public financing of campaigns, and the relationship of the State Board of Elections to the Administrative Procedure Act (APA). Senator Daniel Clodfelter recounted an incident in his home county of Mecklenburg which led him to believe there is a need for legislation to limit the political activities of elections board members. After discussion, the Commission voted to recommend to the 2000 Session a bill to address the issue. (See *Appendix C*.) The topic of the public financing of campaigns was addressed by the Co-Chairs, Sen. Gulley and Rep. Bonner, who described bills introduced in the 1999 Session. The bills would have created a system of comprehensive public financing for statewide and legislative candidates. A discussion followed concerning the mechanics of the bills. In addition, Mayor Glen Lang of Cary presented his proposal for a city ordinance allowing public financing to candidates in Cary city elections. On the topic of the APA, Mr. Leake made the case that the General Assembly should grant the State Board of Elections an exemption from the APA, and Rep. Pope argued that the State Board should at least be subject to the APA's rulemaking provisions.

At its fourth meeting, held on October 10, 2000, the Commission heard a report concerning the election law changes enacted during the 2000 Short Session and an updated report on litigation. During the 2000 Short Session, the Commission's recommendation on the issue of conduct of election officials, with some changes, was introduced by Senators Gulley and Clodfelter as Senate Bill 1290. With further changes, the bill was ratified as Session Law 2000-114. The ratified bill is also included at *Appendix C*. Mr. Crowell reported on the progress of the Rewrite Subcommittee, namely its draft of a new Article 13A, which merged and modernized the current Articles 13 and 14 of Chapter 163. The Commission also considered the question of

national party soft money in North Carolina elections at its fourth meeting. Several materials concerning national party soft money are included in *Appendix D*, among them:

- The opinion ruling issued by the Executive Secretary-Director of the State Board of Elections in June 1998. In response to a complaint alleging violations of the opinion ruling, the State Board issued an order in September 2000 saying that a 1999 legislative change in campaign finance law vitiated the ruling and made possible the flow of national party soft money, indirectly and even directly, into the coffers of North Carolina candidates.
- The order of the State Board of Elections in September 2000 rescinding the 1998 opinion ruling.
- A chart depicting the flow of national party soft money .
- A list of North Carolina laws relevant to soft money.
- A table analyzing the decisions the General Assembly may consider regarding national party soft money.

The State Board of Elections decided in 2000 that a change made to the State campaign finance law by the 1999 General Assembly had the effect of repealing the State Board's 1998 ruling. That 1999 legislative change added national party executive committees to the exemption from the \$4,000 contribution limit that already applied to State, district, and county party executive committees. In response to a complaint, the State Board decided in 2000 that the addition of the word "national" to the party committee exemption meant that national parties were free to make unlimited contributions not just to any party committee in North Carolina, but directly to candidates as well. As a corollary, the State Board found that, although it still had legal authority to demand that soft money contributions be cleansed of corporate and union money, it could no longer insist that the State party spend national party soft money only on party-building activities. Larry Leake, a member of the Commission and the Chair of the State Board of

Elections, told the Commission that a repeal of the 1999 legislation – essentially a one-word change in the law – would enable the State Board to once again enforce its 1998 opinion ruling.

At its fifth meeting, held on November 9, 2000, the Commission discussed the runoff primary. Included at *Appendix E* is a chart showing the runoff primaries that have been held for offices above the local level since 1990, the first year in which the threshold for avoiding a runoff was 40% rather than 50%. The Commission members heard a presentation by Dr. David Lublin, a political scientist from American University, concerning the idea of abolishing the runoff primary. The Commission discussed the pros and cons. They heard a further report from Mr. Crowell about the rewrite project, this time focusing on a draft of the proposed Article 13A. Candice Copas, Commission member and Chair of the North Carolina Libertarian Party, presented two proposals to change the ballot access laws for new parties. Her written proposals are included at *Appendix F*. Susan Kelly Nichols, Deputy Attorney General representing the State Board of Elections, made a presentation about election statutes that, based on litigation and other concerns, might need attention. The memo used in her presentation is included at *Appendix I*. Finally, the Commission voted to recommend to the 2001 General Assembly the repeal of the Campaign Finance Act change in 1999 that the State Board of Elections cited in its decision to allow national party soft money to go directly to North Carolina candidates. Larry Leake, a Commission member and Chair of the State Board, told the Commission that a simple repeal would allow the State Board once again to enforce its 1998 opinion ruling. The recommendation is included in *Appendix K* as Legislative Proposal I.

At its sixth meeting, held on December 5, 2000, the Commission heard a report from Gary O. Bartlett, Commission member and Executive Secretary-Director of the State Board of Elections, on North Carolina's first experience with no-excuse One-Stop absentee voting. Mr. Bartlett reported that the program was very popular with voters, drawing almost 400,000 of them. See *Appendix G*. He suggested the need for a gap of time between the close of registration

and the opening of One-Stop voting. Under current law, registration closes on a Friday and One-Stop begins the following Monday, leaving some county election boards with little time to process the last-minute registration applications before they were fully engaged in serving the unprecedented volume of One-Stop voters.

The Commission heard another report from Mr. Crowell on the rewrite project. He noted the coincidence that the controversy over counting presidential ballots in Florida was occurring at the same time that the Rewrite Subcommittee was rewriting the part of the North Carolina statute that deals with counting ballots, canvassing votes, and certifying results.

The Commission then considered, issue by issue, the contents of two draft bills, one short-titled “Ballot Access Changes” and one short-titled “Miscellaneous Election Changes.” The summary documents of the proposals are included at *Appendix J*. After much discussion, the Commission voted to approve, with recommended changes, all but two of the proposals. Decision was delayed on Item #2 of the Ballot Access Changes pending a redraft of the deadline for nominating Presidential candidates. The Commission did not vote to recommend Item #7, the repeal of the “sore loser” provisions. Items approved by the Commission include:

- Granting the national party executive committee, rather than its State counterpart, the authority to make replacements on the Presidential ticket.
- Replacing the requirement that precinct changes be posted “on the courthouse door” with a more modern requirement that they be posted at the county board of elections office.
- Requiring on city incorporation petitions a date of birth, rather than phone number as originally proposed.

The bills as recommended are included at *Appendix L* as Legislative Proposal II and at *Appendix M* as Legislative Proposal III.

The Commission held its seventh and final meeting on January 4, 2000. At that meeting, the Commission voted to approve this report and recommend its contents to the 2001 General Assembly. Reviewing a draft report, the Commission voted at the last meeting to add several items to the draft:

- It voted to lower from 2% to 1.5% the percentage of petition signatures required of statewide unaffiliated candidates. The Commission had previously voted to make that a percentage of the vote in the latest Governor's race, rather than of all the State's registered voters. The effect of both changes would be to lower the raw number of signatures required from more than 102,000 down to 44,000.
- It voted to recommend the abolition of municipal boards of elections. That recommendation is embodied in Legislative Proposal IV, included at *Appendix N*.
- It voted to recommend that the 2001 General Assembly exempt the State Board of Elections from the Administrative Procedure Act, provided that the State Board is required to provide equivalent notice, due process, and right of appeal. While endorsing the concept, the Commission did not put forth a piece of legislation.
- It voted to add a proviso to the deadline for nominating candidates for President and Vice President. The Commission had already voted that the deadline should be 90 days before the election. It added the proviso that a party could certify those nominees as late as two days after a national convention, but no later than August 20.

FINDINGS AND RECOMMENDATION

Upon discussion and debate, the Election Laws Revision Commission makes the following findings and recommendations:

1. National Party Soft Money.

A) ***Findings.*** Based upon the presentations and discussion, the Commission finds that national party soft money, if its flow into North Carolina campaigns is not closely monitored and controlled, can overwhelm the electoral process. In support of this finding, the Committee states the following:

- Because national parties can raise soft money in unlimited amounts from anywhere in the nation, they can amass enormous central war chests.
- Because national parties may raise soft money even from corporations and labor unions, the flow of that soft money into North Carolina campaigns makes it difficult for the State to enforce its prohibition on corporate and union money.
- In 1998 the State Board of Elections directed that national party soft money coming into State parties must abide by certain limits:
 - i. It must come to the State party executive committee only, not to county or district party committees.
 - ii. The national party must be able to show that corporate and union contributions are not included in the soft money it sends to North Carolina.
 - iii. The State party must use the national party soft money for "party building activities" only, not for direct support for individual candidates.

The State Board of Elections decided in 2000 that a change made to the State campaign finance law by the 1999 General Assembly had the effect of repealing the State Board's 1998 ruling. That 1999 legislative change added national party executive committees to the exemption from the \$4,000 contribution limit that already applied to State, district, and county party executive committees. In response to a complaint, the State Board decided in 2000 that the addition of the word "national" to the party committee exemption meant that national parties were free to make unlimited contributions not just to any party committee in North Carolina, but directly to candidates as well. As a corollary, the State Board found that, although it still had legal authority to demand that soft money contributions be cleansed of corporate and union money, it could no longer insist that the State party spend national party soft money only on party-building activities. Larry Leake, a member of the Commission and the Chair of the State Board of Elections, told the Commission that a repeal of the 1999 legislation – essentially a one-word change in the law – would enable the State Board to once again enforce its 1998 ruling.

B) Recommendation. Therefore, the Commission recommends Legislative Proposal I, included at Appendix K, entitled “AN ACT TO CONTROL THE FLOW OF NATIONAL POLITICAL PARTY CONTRIBUTIONS INTO NORTH CAROLINA CAMPAIGNS.” In summary the bill deletes the word "national" from the party-committee exemption from the contribution limit.

2. Second (or Runoff) Primaries.

A) ***Findings.*** As directed by the General Assembly in 2000, the Commission investigated the idea of abolishing North Carolina's runoff primary. The Commission consulted with political scientists who have studied the question and reviewed data from the runoff primaries held in the past 10 years. See ***Appendix E.*** Based upon the presentations and discussion, the Commission found arguments both for and against retaining the current system:

- ***Con:*** During a period in its history, the effect of the second primary may have been to impose a glass ceiling on candidates favored by racial minority groups. This was true when minority voters were rarely in the majority in any electorate and faced staunch opposition from the solid white majority.
- ***Con:*** Since 1990, when the threshold for a front-runner's immunity from a second primary was reduced from 50% to 40%, relatively few second primaries have occurred beyond the local level. Indeed, only 27 second primaries have been held in that category, out of a potential of more than 1,000.
- ***Con:*** Conducting a second primary in every precinct in the State costs more than a million dollars. All polling places in the State must be opened and precinct officials must be paid to staff them. When only relatively obscure contests appear on the ballot on that day and few people turn out, the cost seems disproportionate.
- ***Con:*** The dropoff in turnout for a second primary is often severe. This dropoff may have increased since the 40% change, when the fact of fewer runoffs means that second-primary day has one or two obscure elections on the ballot, giving voters little reason to turn out. Among the 27 runoffs

studied since 1990, more than half had a reduction in turnout of more than 50% from the first primary. Several had drop offs of approximately 80%.

- **Pro:** Since the emergence of majority-minority districts in the Voting Rights Act environment of the late 20th century, the second primary does not always work to the disadvantage of minority voters. In a 50%-60% black district, one candidate with unified white support may be able to overwhelm a divided field of black candidates if there is no second primary.
- **Pro:** Without a second primary, a candidate can win a primary in a crowded field with a disturbingly small share of vote. In four of the 27 contests studied, the first-primary frontrunner received less than 30% of the vote. If that candidate represented a viewpoint inimical to two-thirds of the party's voters, the result would seem like a hijacking of the party by a small minority.
- **Pro:** In almost half of the runoffs studied, the runoff reversed the result of the first primary: i.e., the first primary frontrunner was defeated in the runoff.

B) Recommendation. The Commission made the decision not to recommend changing the 40% threshold second primary at this time. On balance, the wisest choice at present is to continue the current provision and monitor how it evolves in the 21st century.

3. Ballot Access.

A) Findings. Based upon the presentations and discussion, the Commission finds that North Carolina's laws governing access of new parties and unaffiliated candidates to the ballot, in some instances, make qualifying to appear on the ballot more difficult than it needs to be to provide for the production of the ballot

and the orderly conduct of the general election. In support of this finding the Commission states:

- Petition and Candidate-Nomination Deadlines. The deadlines for new-party petitions is mid-May and for statewide unaffiliated candidacies the deadline is mid-June. New party candidates must be nominated by July 1. Election administrators say that, as long as they know the content of the ballot by early August, they have sufficient time to print the ballot.
- Petition Wording. The wording of new parties' petitions, spelled out in current statute, discourages signature collection by saying that the undersigned "intend to organize" the new party. The required wording also needlessly and intrusively requires the listing on every petition of the Party Chair's home address.
- Number of Signatures for Unaffiliated Candidacy. North Carolina requires a statewide unaffiliated candidate to collect signatures equal to 2% of the registered voters in the State. Based upon October 2000 registration figures, that means 102,442 signatures. Of all the States, only California (with four times North Carolina's population) requires a higher raw number of signatures.
- Consequences of a Party's Losing Ballot Status. If a party's candidate for either President or Governor does not receive at least 10% of the vote in a leap year election, that party loses its ballot status. Under current law all the voters affiliated with that party are notified that if they do not switch to a remaining party, their party-affiliation will be changed to unaffiliated. Overriding the voter's probable intent, North Carolina does not allow a voter to remain officially affiliated with the party that has lost its status.

B) Recommendations. Therefore, the Commission recommends Legislative Proposal II, included at *Appendix L*, entitled “AN ACT TO MAKE CHANGES TO THE BALLOT ACCESS LAWS.” In summary the bill would:

- Move deadlines for new party and unaffiliated candidate petitions to the last Friday in July. As a corollary, the Commission recommends moving the candidate nomination deadline to the 90th day before the general election. In the case of Presidential candidates, that can be extended until two days after a national convention completes its work, but not later than August 20.
- On new party petitions, simply say that the undersigned wishes that the party appear on the ballot. The Commission recommends requiring a State headquarters mailing address instead of the State Chair's home address.
- Require statewide unaffiliated candidates to collect signatures equaling 1.5% of the voters in the last Governor's race. In the next cycle that will mean 44,009 names. Still a significant challenge (still a higher number of names than any State except California and Florida), 44,009 is nonetheless 57% less than the 102,000 needed under the current requirement of 2% of registered voters. The Governor's-race standard would also be used for non-statewide offices, where the percentage is now 4%: The Commission recommends 4% of the gubernatorial vote rather than 4% of all registered voters.
- Give voters affiliated with a party that has lost its ballot status the option of keeping their official affiliation with that party.

4. Miscellaneous Provisions.

A) Findings. The Commission finds that in several scattered instances the election statutes contain provisions that, for various reasons, need attention. They include:

- Notice of Precinct Changes. For various reasons, county boards of elections often change the boundaries of precincts or change the location of voting places. Current law requires that, when it makes such a change, a county board must give public notice at least 45 days before the next election in three ways: by advertising in a newspaper, by posting the change on the courthouse door, and by notifying the County Chairs of the political parties. Although it isn't required, many counties mail a notice to each voter who will be affected. The Commission finds that a mailing to each affected voter is the kind of notice voters have a right to expect.
- Military/Overseas Voters. Current North Carolina statutes are not as clear as they should be about the rights of military and overseas voters to register and vote after the normal registration deadline for an election. Administrative practice follows what has been determined to be the effect of the federal and State law read together: I.e., if a military or official overseas voter is absent *on the last day of registration* for an election but returns by election day, that voter may both register and vote on election day.
- Filling Vacancies on Presidential Ticket. Current law is silent – or at least ambiguous – on the question of who fills the vacancy on a Presidential ticket or among presidential electors. A recent dispute within the Reform Party points up the need for clarity on this question. The logical entity to decide is the national party executive committee.
- Court-Disapproved Ad Labeling Requirement. The U.S. District Court in *N.C. Right to Life v. Leake* has enjoined the enforcement of G.S. 163-278.39(a)(3). That statute requires the sponsor of a political ad to state in the

ad its position for or against a candidate if the ad in fact supports or opposes a clearly identified candidate. That provision, a carryover from a 1987 law, was repositioned in 1999 in a more comprehensive law regulating political ads. In the new context, the old provision takes on a circular character. The Commission finds the continued need for the provision is less than compelling.

- Ill-Timed Incorporation Petitions. Currently, the statute gives a county board of elections an unyielding 15 days to verify petitions for the incorporation of a new municipality. When this 15 days happens to fall close to an election, the no-doubt-unintended effect is to overburden the county board.
- Wording of Recount Statute. In the statute that provides for mandatory recounts in statewide races, there is some confusing wording. The statute says the runner-up has a right to a recount if the margin is "at least one-half of one percent (0.5%) of the votes cast, or 10,000 votes, whichever is less." The term "at least" was surely intended to mean "no greater than."

B) Recommendations. Therefore, the Commission recommends Legislative Proposal III, included at *Appendix M*, entitled "AN ACT TO MAKE MISCELLANEOUS CHANGES TO THE ELECTION LAWS. In summary the bill would:

- Require mailed notices of precinct changes to affected voters at least 30 days before the election and replace the 45-day notice on the courthouse door with a notice in the county board of elections office.
- Entitle a military or official overseas voter to both register and vote on election day if that voter is absent in official capacity *on the last day of registration* for an election but returns by election day.

- Designate the national party executive committee with the power to fill a vacancy on the presidential ticket or among presidential electors.
- Repeal the ad-labeling requirement in G.S. 163-278.39(a)(3).
- Toll the 15-day verification window for municipal-incorporation petitions if that window falls within the two weeks before or the one week after an election.
- Correct the wording of the statewide recount statute so that a recount may be awarded if the margin is "no greater than one-half of one percent (0.5%) of the votes cast, or 10,000 votes, whichever is less."

5. Municipal Boards of Elections.

A) ***Findings.*** Based upon the presentations and discussion, the Commission finds that the continued existence of municipal boards of elections has a negative influence on the conduct and perception of elections in North Carolina. A municipal board of elections is appointed by the City Council. The board's purpose is to conduct elections for that City Council. The issues of conflict of interest inherent in such an arrangement are magnified when one examines the list of municipal boards of elections included at ***Appendix B***. Of the 52 municipal boards in existence when the list was prepared (March 2000), all but two were in towns of less than 5,000 total population. Thirty-seven of the 52, or more than two-thirds of them, are in towns of less than 1,000 total population. Twenty-five of the 52, or almost half, are in towns of less than 500 population. And three are actually in towns of less than 100. The difficulty of preserving the detachment necessary for the *appearance* of a judicious approach, if not its reality, is obvious.

In addition, the size of the towns magnifies the risk of error. The State Board of Elections reported anecdotal evidence of municipal boards' failing to be careful with election laws. Such procedural carelessness may cause trouble in any election. But in an election where voters turn out not by the thousands or hundreds but by the dozens, the chances of an extremely narrow

margin multiply. With narrow margins come election protests, and after-the-fact scrutiny of the process. The State Board of Elections reports it faces a formidable task fulfilling its duty to supervise the administration of all elections in the State during odd-numbered years when more than 500 municipalities may be holding City Council elections. That job becomes an unreasonable expectation, the State Board says, when the State Board must train and monitor not merely the 100 county boards of elections with their own paid staff but additionally 50 or more municipal boards, generally without staff of their own. Any staff assistance municipal boards do have tends to consist of employees of the very City Council whose election the board must conduct, furthering entangling everyone in conflicts of interest.

Through training, certification, and supervision of local boards of elections and their staff, the State Board of Elections has attempted to raise the professionalism of North Carolina election administration. The continued existence of municipal boards of elections frustrates that purpose.

In response to a proposal to abolish municipal boards, the 1999 General Assembly enacted legislation giving the State Board clearer supervisory authority over municipal boards. The Commission finds that, while an improvement, the 1999 legislation stops well short of what is needed to address the problem: the outright abolition of the municipal board system.

B) Recommendation. Therefore, the Commission recommends Legislative Proposal IV, included at Appendix N, entitled “AN ACT TO ABOLISH MUNICIPAL BOARDS OF ELECTIONS, REQUIRING THAT ALL ELECTIONS BE CONDUCTED BY THE COUNTY BOARD OF ELECTIONS.” In summary the bill deletes the word "national" from the party-committee exemption from the contribution limit.

6. Exemption of State Board of Elections from the Administrative Procedure Act.

A. *Findings.* Based on presentations and discussion, the Commission finds that the State Board of Elections is unusual among State agencies in that it was created by the General Assembly to be independent of any other executive department. Its duty is to supervise the conduct of elections in the 100 counties of the State, a duty requiring great flexibility and the ability to act quickly. The General Assembly, moreover, has always paid close attention to the operations of the State Board of Elections. The rulemaking requirements of the Administrative Procedure Act, Chapter 150B of the General Statutes, were designed for a more conventional State agency, one with less need for flexibility and less occasion for close attention by the General Assembly. Its purpose was to ensure that State agencies did not go beyond the scope of the authority the General Assembly gave them to promulgate rules and that they did not contravene the intent of the General Assembly. The changes to the APA in the mid-1990s were designed to slow down the rulemaking process for so that the General Assembly would have a full opportunity to revoke a rule through legislation before the rule ever went into effect. The speed with which election rules must be put in place, plus the attention the General Assembly always gives to election matters, makes applying the current APA rulemaking regime to the State Board of Elections inappropriate and unnecessary. As to the contested-case provisions of the APA, in most instances involving the State Board of Elections those APA provisions are already superceded by statutory exceptions in Chapter 163. Election protests, for example, follow the procedural route provided in Chapter 163 and not that in the APA. Removing the State Board from the APA's contested case provisions, therefore, would result in little real change.

B) *Recommendation* Therefore, the Commission recommends that the State Board of Elections be exempted from the Administrative Procedure Act. The Commission further recommends, however, that the State Board of Elections be directed to follow the essential

requirements of notice, opportunity for hearing, and right of appeal that appear in the Administrative Procedure Act.

7. Chapter 163 Update.

A) **Findings.** The Commission finds that Articles 13, 14, 15, and 16 of Chapter 163 of the General Statutes are in need of updating. They were last comprehensively rewritten, as part of a previous Election Laws Revision Commission, in 1967. At that time, paper ballots counted by hand at the precinct were the predominant method of voting in North Carolina. The statutes prescribe in detail the interior furnishings of a 1967 polling place, the roles to be played by the different precinct officials, and the procedures to be followed in the hand-counting of paper ballots in the precinct. Many of the provisions of Articles 13 and 15, particularly, would serve admirably as a blueprint for building a museum exhibit or as a script for producing a historical re-enactment. They serve poorly, however, as a guide to conducting elections in the 21st century. Now, only three small counties rely primarily on hand-counted paper ballots. The other 97 counties use mechanical, optical-scan, or direct-record electronic "voting systems." The statute essentially treats these 97 counties as the exception rather than the rule. Article 14, titled "Voting Systems," gives the State Board of Elections broad rule-making authority over the conduct of voting on the newer systems, but gives the State Board very little guidance in how to write those rules.

By fortuitous coincidence, the Study Commission began its work on Articles 15 and 16 of Chapter 163, which deal with counting ballots, canvassing results, and handling disputed results, just as the aftermath of the 2000 Presidential Election unfolded. The Rewrite Subcommittee, headed by Michael Crowell, was able to view the stress that a high-stakes close outcome placed on the election laws of Florida. The lessons taught by Florida that North Carolina should learn include the following:

- When counties try to save money by failing to replace unreliable election equipment, they risk having a situation in which the margin of victory is within the margin of error. North Carolina has some of the same voting systems that Florida has, including punchcard ballots in eight counties and, in seven counties, lever machines for which replacement parts are no longer made. See *Appendix H*. Current N.C. law gives the State Board of Elections the authority to determine which voting systems counties can purchase.
- When an election is protested, one may expect trouble in the courts if different standards are used in different counties to count the votes. Indeed, the U.S. Supreme Court's *per curiam* opinion in *Bush v. Gore* contained language that may give rise to federal lawsuits under the Equal Protection Clause of the 14th Amendment. North Carolina, like Florida, has statutory language that makes the intent of the voter the standard of vote counting. The State Board of Elections is given a specific duty to promulgate rules for mandatory recounts.
- When an election is protested, a one may expect trouble on all fronts when the law is unclear about the procedure to be followed in hearing a complaint, ordering a recount, or ordering a new election. North Carolina has a clear procedure about how boards of elections handle protests, but it is in rules rather than in statute. The statutes about calling new elections have some significant gaps.

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B) Recommendations. Therefore, the Commission recommends two bills, the attached legislation entitled "A BILL TO BE ENTITLED AN ACT TO REWRITE ARTICLE 13 AND ARTICLE 14 OF CHAPTER 163, AS RECOMMENDED BY THE ELECTION LAWS REVISION COMMISSION " (included as Legislative Proposal V at *Appendix O*) and "A BILL TO BE

ENTITLED AN ACT TO REWRITE ARTICLE 15 AND ARTICLE 16 OF CHAPTER 163, AS RECOMMENDED BY THE ELECTION LAWS REVISION COMMISSION" (included as Legislative Proposal VI at *Appendix P*). Proposal V merges and updates Articles 13 and 14, of Chapter 163 to conform to modern election practices. Instead of very specific instructions for hand-counted paper ballots in Article 13 and the carte blanche rulemaking authority to the State Board for everything else in Article 14, the rewrite wipes out that distinction, giving the State Board guidelines to use in making rules that apply to all technologies. The rewrite makes the following policy choices:

- Following current practice in most counties, the straight-ticket applies to all contests other than President.
- Counties would have uniform responsibility for producing ballots. Currently, counties using hand-counted paper ballots (3 in number) pay for the printing of the local ballots and the State pays for the State portion of the ballot in those counties, but in the automated counties (the other 97) the county pays for almost all ballot production.
- The State Board of Elections would be given the authority to approve not only the types of voting systems, but also makes and models. Perhaps more important, it would be given the authority to disapprove a voting system already in use in a county. The State Board would have authority to set a phase-out schedule for the disapproved system in the county.
- The county board of elections would have more discretion in setting up a campaign-free buffer zone around the voting place. Current law has a rigid 50 foot limit. The rewrite deletes candidates' special privilege to enter the buffer zone.

- The county board of elections would have discretion to keep the polls open an extra hour in "extraordinary circumstances." Current law allows a board unguided discretion to leave the polls open where voting machines are used.

Proposal VI merges and rewrites Articles 15 and 16. Article 15 deals with counting ballots, canvassing votes, and certifying results in precinct and county. Article 16 deals with the same thing for higher offices at the State level. Moving away from specific instructions for counting paper ballots by hand at the precinct, the rewrite introduces the concept of the "initial counting" of ballots. It recognizes that much of that initial counting today occurs at the county board office. Expanding upon the principle in current law that the voter's intent should count, the draft addresses what happens when an optical scanner rejects a ballot or when a provisional ballot has been cast by someone ineligible to vote part of that ballot. In both cases, the effort is made to determine the voter's choice on the parts of the ballot where that choice is legally valid and can be determined.

For circumstances in which problems and disputes arise in determining the results, Proposal VI makes these changes in an attempt to improve current law:

- Protests. The rules promulgated by the State Board of Elections about election protests are largely placed in the statutes. Those rules address who may file protests, how they are heard, how they may be appealed, etc.
- Recounts. The rewrite collects the provisions about recounts into one statutory section. It gives the State Board the duty to promulgate rules about the conduct of recounts, whether ordered because of a close margin or for some other reason. It specifies that those rules shall guide boards on when and to what extent to conduct hand-eye recounts. And it says the rules shall provide guidance in interpretation of the voter's choice.

- Tie Votes. The rewrite replaces the current odd collection of ways to resolve a tie vote with the following rule: If more than 5,000 voted in the election, a tie results in a new election; if 5,000 or less voted, a tie is broken by random selection.
- New Elections. The statute concerning new elections is moved into this Article from another part of Chapter 163. The new section clarifies that, regardless of the reason, the State Board may order a new election only upon the vote of four of its five members. The statute also addresses some issues on which the old statute is silent: Who may vote in the new election? The rewrite says any person who is eligible at the time of the new election, except that the State Board must promulgate rules to prevent someone who voted in a primary of one party from voting in a new-election primary of the other party. Must the new election to be held in the entire jurisdiction of the initial election? The rewrite says yes. Must all the candidates in the initial election be on the ballot in the new election? Yes, with three exceptions. If a candidate dies or otherwise becomes ineligible before the new election, the candidate may be replaced as before the original election. In a multi-seat race, four members of the State Board can allow the new election to be held only between the candidates affected by the irregularities. In tie votes, only the tied candidates will be on the ballot in the new election.

8. Continuation of the Study Commission.

- A) ***Finding.*** The Commission finds that rewriting Chapter 163 is a work in progress that needs to be continued along the same path that has been begun.

B) **Recommendation.** The Commission recommends that the 2001 General Assembly re-authorize the Election Laws Revision Commission with its current mandate.

CHAPTER 395
1999 Session Laws (1999 Session)

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE VARIOUS STUDY COMMISSIONS, TO DIRECT STATE AGENCIES AND LEGISLATIVE OVERSIGHT COMMITTEES AND COMMISSIONS TO STUDY SPECIFIED ISSUES, AND TO AMEND OTHER LAWS.

The General Assembly of North Carolina enacts:

PART I.-----TITLE

Section 1. This act shall be known as "The Studies Act of 1999".

. . .

PART IV.-----ELECTION LAWS STUDY COMMISSION (S.B. 882 - Gulley; H.B. 1402, H.B. 1073 - Alexander)

Section 4.1. There is created an Election Laws Revision Commission. The Commission shall be composed of 17 members. Twelve members shall be appointed as follows:

- (1) The President Pro Tempore of the Senate shall appoint four members, including at least one county board of elections member, with no more than three of the four affiliated with the same political party.
- (2) The Speaker of the House of Representatives shall appoint four members, including at least one county elections director, with no more than three of the four affiliated with the same political party.
- (3) The Governor shall appoint four members, including at least one county commissioner and at least one minority-party member of the State Board of Elections.

The Chair and the Executive Secretary-Director of the State Board of Elections shall be ex officio members. The State chairs of the three political parties whose nominees for Governor received the largest number of votes in the most recent general election for Governor shall be ex officio members. All members of the Commission, whether appointed or ex officio, shall be voting members.

Section 4.2. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Commission from their appointees.

Section 4.3. The Election Laws Revision Commission shall study the following:

- (1) The election laws, policies, and procedures of the State.
- (2) The administration of those laws, policies, and procedures at the State and local levels and the responsibilities of those administering these laws.
- (3) The election laws, policies, and procedures of other States and jurisdictions.
- (4) Federal and State case rulings impinging on these laws, policies, and practices.
- (5) Public funding of election campaigns, including the advisability and proper design of a system to allow public funds to be used to support the campaigns of candidates for Governor, Lieutenant Governor, other Council of State officers, and the General Assembly who agree to abide by fund-raising and spending limits.
- (6) APA exemption for the State Board of Elections.
- (7) Preference voting and instant second primaries.

Section 4.4. The Commission shall prepare and recommend to the General Assembly a comprehensive revision of the election laws of North Carolina that will accomplish the following:

- (1) Remove inconsistencies, inaccuracies, ambiguities, and outdated provisions in the law.
- (2) Incorporate in the law any desirable uncodified procedures, practices, and rulings of a general nature that have been implemented by the State Board of Elections or its Executive Secretary-Director.

- (3) Conform the statutory law to State and federal case law and to any requirements of federal statutory law and regulation.
- (4) Ensure the efficient and effective administration of elections in this State.
- (5) Continue the impartial, professional administration of elections, which the citizens of the State expect and demand.
- (6) Recodify the election laws, as necessary, to produce a comprehensive, clearly understandable structure of current North Carolina election law, susceptible to orderly expansion as necessary.

Section 4.5. With the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to assist in the work of the Election Laws Revision Commission and may provide for additional staffing by the State Board of Elections, Office of the Attorney General, and the Institute of Government. With prior approval of the State Board of Elections, the Election Laws Revision Commission may hold its meetings in the offices of the State Board. With the prior approval of the Legislative Services Commission, the Election Laws Revision Commission may hold its meetings in the State Legislative Building or the Legislative Office Building.

Section 4.6. The Commission shall submit a final written report of its findings and recommendations on or before the convening of the 2001 Session of the General Assembly and may submit a report to the 2000 Regular Session of the 1999 General Assembly. All reports shall be filed with the President Pro Tempore of the Senate and the Speaker of the House of Representatives, the Principal Clerks of the Senate and the House of Representatives, and the Legislative Librarian. Upon filing its final report, the Commission shall terminate.

Section 4.7. Members of the Commission shall be paid per diem, subsistence, and travel allowances as follows:

- (1) Commission members who are also members of the General Assembly, at the rate established in G.S. 120-3.1;
- (2) Commission members who are officials or employees of the State or local government agencies, at the rate established in G.S. 138-6;
- (3) All other Commission members, at the rate established in G.S. 138-5.

Section 4.8. All State departments and agencies, local boards of elections, and local governments and their subdivisions shall cooperate with the Commission and, upon request, shall furnish to the Commission and its staff any information in their possession or available to them.

Section 4.9. From funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the expenses of the Election Laws Revision Commission.

. . .

PART XXIII.-----EFFECTIVE DATE AND APPLICABILITY

Section 23.1. Except as otherwise specifically provided, this act becomes effective July 1, 1999. If a study is authorized both in this act and the Current Operations Appropriations Act of 1999, the study shall be implemented in accordance with the Current Operations Appropriations Act of 1999 as ratified.

In the General Assembly read three times and ratified this the 21st day of July, 1999.

s/ Dennis A. Wicker
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 9:03 p.m. this 5th day of August, 1999

Cities With Municipal Boards of Elections.

March 2000

William R. Gilkeson, Research Division, N.C. General Assembly.
List of municipal boards supplied by State Board of Elections. Population estimates from State Data Center.

County	City	Population (1998 Estimated)
Alexander	Taylorsville	2,325
Allegheny	Sparta	1,968
Anson	Wadesboro	3,591 *
	Peachland	493 *
	Polkton	646 *
	Ansonville	611 *
	Lilesville	439 *
Bertie	Askewville	201
Burke	Morganton	16,080
Caldwell	Granite Falls	3,691
	Rhodhiss (part in Burke)	759
Columbus	Cerro Gordo	218 *
	Brunswick	305
Craven	Vanceboro	1,024
	Dover	449 *
Cumberland	Falcon	338 *
	Stedman	651
	Godwin	71 *
	Wade	450
Haywood	Canton	3,672 *
Hertford	Winton	786 *
	Murfreesboro	2,100 *
	Harrellsville	92 *
	Como	102
	Cofield	377 *

(continued)

Iredell	Love Valley	78
	Mooresville	15,913
	Harmony	586
Madison	Mars Hill	1,635
	Marshall	871
	Hot Springs	554
McDowell	Old Fort	1,009
Mitchell	Bakersville	331 *
Pamlico	Mesic	306 *
	Minnesott Beach	301
	Stonewall	277 *
	Vandemere	320
	Arapahoe	463
Pender	Watha	174
	Atkinson	319
Polk	Saluda (part in Henderson)	658
	Tryon	1,752
Richmond	Norman	94 *
	Hoffman	466
Sampson	Garland	796
Swain	Bryson City	1,102 *
Warren	Warrenton	955
	Norlina	1,061
	Macon	156
Washington	Creswell	329 *
	Roper	617 *
Yancey	Burnsville	1,585

* indicates a drop in population since the 1990 Census.

LEGISLATIVE PROPOSAL

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

D

2000-RRY-006.1

THIS IS A DRAFT <date=system> <time=system>

Short Title: Election Bd. Conduct.

(Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT CERTAIN POLITICAL ACTIVITIES BY BOARD OF ELECTIONS MEMBERS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 163 of the General Statutes is amended by adding a new Article to read:

"Article 4A.

Political Activities by Board of Elections Members.

§ 163-38. Applicability of Article.

This Article applies to members of the State Board of Elections and of each county and municipal board of elections. With regard to prohibitions in this Article concerning candidates, referenda, and committees, the prohibitions do not apply if the candidate or referendum will not be on the ballot in an area within the jurisdiction of the board, or if the political committee or referendum committee is not involved with an election or referendum that will be on the ballot in an area within the jurisdiction of the board.

§ 163-39. Limitation on political activities.

No person subject to this Article shall:

- (1) Make public statements supporting or opposing the nomination or election of one or more clearly identified candidates for public office.
- (2) Make public statements supporting or opposing the passage of one or more clearly identified referendum proposals.
- (3) Solicit contributions for a candidate, political committee, or referendum committee.

Nothing in this Article shall be deemed to prohibit participation in a political party convention as a delegate. Nothing in this Article shall be deemed to prohibit a board member from making a contribution.

§ 163-40. No person to engage in prohibited act as alter ego.

No person acting as the alter ego of a board member subject to this Article shall engage in any act prohibited by this Article. § 163-40.1. Violation is ground for removal.

A violation of this Article is a ground to remove a State Board member under G.S. 143B-16, a county board member under G.S. 163-22(c), or a municipal board member under G.S. 163-280(i).

§ 163-40.2. Definitions.

The provisions of Article 22A of this Chapter shall apply to the definition and proof of terms used in this Article."

Section 2. This act becomes effective January 1, 2001.



LEGISLATIVE PROPOSAL OF ELECTION LAWS REVISION COMMISSION: Election Board Conduct.

Committee: Election Laws Revision
Commission

Introduced by:

Date: April 13, 2000

Summary by: William R. Gilkeson
Committee Co-Counsel

Version: 2000-RRY-006.1

SUMMARY: *The bill would prohibit members of county, municipal, and State boards of elections from making public statements supporting or opposing the nomination or election of candidates on the ballot within the territory covered by the board. The same would apply for statements by board members supporting or opposing the passage of referendum proposals.*

CURRENT LAW: Current law takes party affiliation into account in the process by which members of State, county, and municipal boards of elections are appointed. The law places campaign-related limitations on board members in terms of their qualifications. But current law does not prohibit board members from endorsing candidates or soliciting contributions.

Appointment. Currently, State and county board of elections members are appointed from lists of nominees put forth by the State Chairs of the political parties. State Board members are appointed by the Governor. County board members are appointed by the State Board. Municipal board members are appointed by the city council. No more than a simple majority of any of the three kinds of boards may be of the same party. Municipal boards, however, may only exist in cities that have nonpartisan city elections, and the appointment process of municipal boards does not have a formal role for the party Chairs. In all three kinds of boards, the members are appointed for a set term.

Qualifications. Current law says State and county board members may not be elected officials, candidates for elective office, an officer in a political party organization, or a campaign manager or political treasurer. County board of elections members have the additional requirement of not being related to a candidate for office in the county as spouse, son, son-in-law, daughter, daughter-in-law, parent-in-law, sister-in-law, brother-in-law, aunt, uncle, niece, or nephew. The county board statute has a proviso that serving as a party convention delegate is permitted. Municipal board of elections members may not hold or be candidates for elective office or be campaign manager for a candidate, but nothing is said about being a treasurer and nothing is said about party activity. All those limitations are stated as qualifications for the office rather than as limitations on activity. The county board statute actually says that if a member fails to meet one of those qualifications, the office becomes vacant.

Removal. There are roughly parallel provisions in the statutes for all three kinds of boards giving the appointing authority the right to remove a board member for good cause.

BILL ANALYSIS: The Commission's Legislative Proposal would create a new Article in Chapter 163, the Election Law, setting out uniform limitations on the political activity of members of State, county, and municipal boards of elections. None would be able to make public statements supporting or opposing

LEGISLATIVE PROPOSAL OF ELECTION LAWS REVISION COMMISSION

the nomination or election of candidates or the passage of referendum proposals. This would apply only to candidates or referenda on the ballot in the territory covered by the board. Board members would also be prohibited from soliciting contributions for those candidates or referendum proposals, or for committees supporting them. The prohibitions would not apply to serving as a delegate to a political convention, or to *making* contributions, as opposing to *soliciting* them. A violation of the Article would be grounds for removal under the current statutes that allow removal for cause.

The bill provides that no person may do what the board member is prohibited from doing if that person is acting as the board member's alter ego.

The bill says terms in the new Article, such as "candidate," "support or oppose the nomination or election of a candidate," and "contribution" have the same meaning as in Article 22A, the Campaign Finance Act.

The bill would become effective January 1, 2001.

BACKGROUND: The Commission voted to endorse this Legislative Proposal at its April 13, 2000, meeting after hearing from Sen. Daniel Clodfelter of Mecklenburg County. Sen. Clodfelter recounted an incident in which a member of the Mecklenburg County Board of Elections wrote and signed letters and articles published in *The Charlotte Observer* advocating the defeat of members of the Charlotte-Mecklenburg School Board. When a citizen complained about this to the State Board of Elections, she was told that nothing prohibited the board member's statements. Sen. Clodfelter noted that the N.C. Code of Judicial Conduct prohibits such conduct by judges as being inappropriate to their office, and he noted that boards of elections sit in a quasi-judicial capacity. The initial draft of a bill Sen. Clodfelter presented to the Commission was patterned closely after the Code of Judicial Conduct, but members of the Commission suggested changes before they endorsed the proposal. Notably, the Commission removed from the draft a prohibition against board members making contributions.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SESSION LAW 2000-114
SENATE BILL 1290

AN ACT TO PROHIBIT CERTAIN POLITICAL ACTIVITIES BY BOARD OF
ELECTIONS MEMBERS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 163 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 4A.

"Political Activities by Board of Elections Members.

"§ 163-38. Applicability of Article.

This Article applies to members of the State Board of Elections and of each county and municipal board of elections. With regard to prohibitions in this Article concerning candidates, referenda, and committees, the prohibitions do not apply if the candidate or referendum will not be on the ballot in an area within the jurisdiction of the board, or if the political committee or referendum committee is not involved with an election or referendum that will be on the ballot in an area within the jurisdiction of the board.

"§ 163-39. Limitation on political activities.

No individual subject to this Article shall:

(1) Make written or oral statements

intended for general distribution or dissemination to the public at large supporting or opposing the nomination or election of one or more clearly identified candidates for public office.

(2) Make written or oral statements

intended for general distribution or dissemination to the public at large supporting or opposing the passage of one or more clearly identified referendum proposals.

(3) Solicit contributions for a candidate,

political committee, or referendum committee.

Individual expressions of opinion, support, or opposition not intended for general public distribution shall not be deemed a violation of this Article. Nothing in this Article shall be deemed to prohibit participation in a political party convention as a delegate. Nothing in this Article shall be deemed to prohibit a board member from making a contribution to a candidate, political committee, or referendum committee.

"§ 163-40. Violation may be ground for removal.

A violation of this Article may be a ground to remove a State Board of Elections member under G.S. 143B-16, a county board of elections member under G.S. 163-22(c), or a municipal board of elections member under G.S. 163-280(i). No criminal penalty shall be imposed for a violation of this Article.

"§ 163-40.1. Definitions.

The provisions of Article 22A of this Chapter apply to the definition and proof of terms used in this Article."

Section 2. This act becomes effective January 1, 2001.

In the General Assembly read three times and ratified this the 7th day of July, 2000.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 8:36 a.m. this 14th day of July, 2000

June 15, 1998

RULING AND PROCEDURES
PURSUANT TO NCGS §163-278.23
FOR NON-FEDERAL MONEY
IN THE STATE OF NORTH CAROLINA

By direction and approval of the State Board of Elections, the Executive Secretary-Director hereby issues the following rules and procedures to be followed by any recognized national and state political party intending to engage in the transfer of non-federal funds from the nation political party to a corresponding state political party.

A national political party committee as defined by 11 CFR 100.5(a) and 11 CFR 1005(e)(4) is any committee, club, association, organization or other group of persons which receives contributions aggregating in excess of \$1,000 or which makes expenditures aggregating in excess of \$1,000; said party committee is one that represents a political party and is part of the official party structure at the national level.

A state political party committee is defined pursuant to NCGS §163-278.6(14) as a combination of two or more individuals, or any person, committee, association, or organization, the primary or incidental purpose of which is to support or oppose any candidate or political party or to influence or attempt to influence the result of an election or which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the nomination or election of any candidate at any election, or which receives contributions to repay loans or cover a deficit, or which makes expenditures to satisfy obligations of an election already held.

A “state political party” is any political party meeting the requirements of N.C.G.S. §163-96.

National Political Party Committee

1. A national political party committee intending to transfer or which does transfer non-federal funds to a corresponding state political party committee must cause to be established a separate and segregated account in a national or State bank or federal or State savings and loan association. The national political party committee must submit to the North Carolina State Board of Elections for approval the particulars of such account; such particulars to include the name of the financial institution, the physical address of the financial institution (not P.O. Box), the name of the account, the number of the account, the name of a contact person and the phone number for that person. Funds accepted and deposited into such dedicated account must be proven not to be in violation of North Carolina law. A change in any of the above particulars must be reported in writing to the State Board of Elections Campaign Reporting Office within 10 days of the change.

Pursuant to §163-278.19(a), funds in the aforementioned separate and segregate account will be comprised exclusively of contributions from individuals using the individual's personal funds and expressly does not include contributions either directly or indirectly from any corporation, business entity, labor union, professional association or insurance company. Funds deposited in the aforementioned account are to be used for the purpose of transferring non-federal funds to the corresponding North Carolina state political party committee.

2. The national political party committee must appoint an assistant or deputy treasurer who is a resident of North Carolina and must stipulate to the State Board of Elections that the designated in-State resident assistant or deputy treasurer shall be authorized to produce whatever records reflecting political activity in North Carolina the State Board of Elections deems necessary pursuant to §163-278.7A(4). Any changes in the appointment of the assistant or deputy treasurer must be reported in writing to the State Board of Elections within 10 days of the change.
3. The national political party committee is required to file with the State Board of Elections a report that complies with current disclosure obligations. Included in this reporting stipulation is a list of contributions that comprise each and every transfer made from other national political party funds to the national political party committee separate and segregated account.

Pursuant to NCGS §163-278.11(a)(1), each listed contribution must set out in full the name and complete mailing address of each contributor, the amount contributed, the contributor's job title or profession; and either the employer's name or the employer's specific field of business activity, and the date such contribution was received.

4. Pursuant to 163-278.7A(2), reports covering the period of the first day of the month to the last day of the month must be filed with the State Board of Elections by the fifteenth day of the subsequent month, with the exception that six months prior to a national or state election reports must be filed on each Monday and cover the previous 7-day period. The State Board of Elections Campaign Reporting Office must still receive all reports in accordance with federal reporting requirements, the above requirements notwithstanding.
5. All Reports must be filed with the State Board of Elections and must be filed electronically beginning September 1, 1998.

The State Political Party Committee

1. A state political party committee intending to receive or does receive a transfer of non-federal funds from the national political party committee must cause to be established a separate and segregated account in a national or State bank or federal or State savings and loan association. The state political party committee must submit to the North Carolina State Board of Elections for approval the particulars

of such account; such particulars to include the name of the financial institution, physical address of financial institution (not P.O. Box), the name of the account, the number of the account, the name of a contact person and the telephone number for that person. Such funds accepted and deposited into such account must be proven not to be in violation of North Carolina law.

Only funds transferred from the corresponding national political party committee funds may be deposited in said separate and segregated account.

2. The receiving state political party committee must report the date and account of transfer and must also report the nature of each and every expenditure. These expenditures may only be made for party-building activities that include, but are not limited to, all Get-Out-The-Vote efforts, polling, mailings, and other general activities and advertising that does not refer to a specific individual candidate. Non-federal funds may not be contributed or transferred to any individual candidate, not may the funds be transferred to the general fund of the state political party committee.

Also, included in acceptable expenditures are administrative costs, building rent, phone or utility costs, salaries and other costs of doing business, such as machine maintenance and purchase.

3. Reports covering the first day of the month through the last day of the month must be filed with the State Board of Elections by the fifteenth of the subsequent month with the exception of six months prior to a national or state election, in which case reports must be filed on each Monday and cover the previous 7-day period. The State Board of Elections Campaign Reporting Office must still receive all reports in accordance with federal reporting requirements, the above requirements notwithstanding.
4. Any contributor that requests an accounting of the use of its individual contribution must receive a written reply within 20 days from either the day state political party committee or the national political party committee, whichever is appropriate, with the state political party committee bearing the responsibility for a written reply to the requesting contributor.
5. Failure to comply with the above will result in immediate suspension by the Executive Secretary-Director of the authorization of the national political party committee to accept or transfer funds to the aforementioned separate and segregated account and the immediate suspension of the corresponding state political party committee authorization to receive non-federal funds. Such authorization will only be reinstated if authorized by a majority vote of such reinstatement by the State Board of Elections.

Pursuant to State Board of Elections Departmental Rules Title 8:01.0004(d), upon failure of either the national political party committee or the state political party

committee to file the required reports, the State Board of Elections shall issue by certified mail a formal NOTICE OF NONCOMPLIANCE to the treasurer of that committee and shall order that the report be filed immediately.

In the event said committee does not file its report within 20 days of the issuance of the NOTE OF NONCOMPLIANCE, the board by certified mail shall issue NOTICE OF TERMINATION OF ACTIVE STATUS, which shall render said committee ineligible to receive or make contributions until such time as it has filed the delinquent report and satisfied any statutory penalty incurred.

BEFORE THE STATE BOARD OF ELECTIONS**NORTH CAROLINA
WAKE COUNTY****IN THE MATTER ON NATIONAL ‘SOFT MONEY’
AND STATE CAMPAIGN FINANCE ISSUES****ORDER OF THE STATE
BOARD OF ELECTIONS****DEMOCRACY SOUTH, a North Carolina non-profit
Corporation, and PETER MacDOWELL, individually
and as Executive Director of Democracy South**Petitioners

THIS MATTER WAS HEARD at the September 29, 2000 meeting of the State Board of Elections. State Board members in attendance at the hearing were Chairman Larry Leake (D), Secretary June Youngblood (R), Dorothy Presser (R), Dawn Baxter (D), and Rose Vaughn Williams (D).

This hearing was called after the State Board received a complaint from the above petitioners alleging inappropriate, improper, and unlawful use of “soft money” by both the Democratic and Republican State and National parties.

Mr. Bob Hall and Mr. Peter MacDowell spoke for Democracy South. The Republican Party was represented by Thomas J. Josefiak, Chief Counsel for the Republican National Committee, and Kenneth Paul Jones, Deputy Counsel of the Republican National Committee. Scott Falmlen, Executive Director, of the North Carolina Democratic Party made a presentation on behalf of the Democratic Party.

The State Board also received comment from members of the public as to the petition with over 100 email messages and 15 letters received by the State Board prior to the hearing. Diana Phillips, President of the League of Women’s Voters of North Carolina spoke in favor of the Petition. Mr. Robert Morgan, Chairman of the North Carolina Center for Voter Education, also spoke in favor of the Petition at the hearing.

The State Board, after reviewing and considering the petition and materials submitted to the Board before and during the hearing, finds and concludes, unanimously, as follows:

FINDINGS

1. The State Board of Elections issued a Ruling and Procedure for Non-Federal Money in North Carolina on June 15, 1998. This ruling had the effect of prohibiting non-

federal funds held by a national party from being tendered to other than a state party and limited the use of said funds. In addition, reporting mandates were established by the ruling. Moneys that were to be dispensed to the state parties were also required to be held in segregated banking accounts both before and after being given and received.

2. The North Carolina General Assembly amended GS 163-278.13 (e), effective May 4, 1999, with the effect of said amendment being that limitation on contributions to candidates and political committees, set out in the statute would not apply to a national political party. The prohibition that prevented a national party contributing to a candidate as established in the State Board's June 15, 1998 ruling was effectively negated by the action of the General Assembly in amending GS 163.278.13 (e).

3. The petitioner in this matter had requested the State Board to adopt a temporary rule banning non-federal 'soft money' in North Carolina. The petitioner had shown that both the nation Republican and Democratic Parties had transferred to the North Carolina Republican and Democratic parties large sums of money in amounts of hundreds of thousands of dollars for use by those parties in state races.

4. However, even though the June 15, 1998 State Board Ruling prohibited such contributions, such contributions are not currently unlawful by virtue of the amendment to GS 163-278.13 (e). The State Board can not and will not attempt to void an action of the North Carolina General Assembly by passing a temporary rule that will have the effect of ignoring a specific statutory amendment that negated a part of the June 15, 1998 State Board ruling. The petitioner, the North Carolina Center for Voter Education, the League of Women Voters of North Carolina, and the numerous members of the public supporting the position of the petitioner are encouraged to express their views on "soft money" and the amendment to GS 163-278.13 (e) to the North Carolina General Assembly which has the power to regulate or ban "soft money".

5. The current actions of the national Republican and Democratic parties in tendering large amounts of "soft money" to the state parties for use in state races is not unlawful. However, it is still prohibited both by the June 15, 1998 Ruling of the State Board and GS 163-278.19 (a) for any corporation, business entity, labor union, professional association or insurance company to contribute to a candidate or political committee. Sixteen thousand dollars (\$16,000) from business entity contributors came into "soft money" contributions given to the North Carolina Republican Party through bank accounts controlled by the Republican National Committee. This money was given unlawfully and should be returned back to the Republican National Committee account, from where it originated, by the North Carolina Republican Party.

6. The democratic National Committee “soft money” account for North Carolina reported seven hundred thousand dollars (\$700,000) in contribution as of September 8, 2000. The Democratic National Committee did send to the State Board a listing of non-corporate contributors with the total contributed on that list amounting to 4.4 million dollars (\$4,400,000.00). Thus it was not possible to determine which of the donor’s moneys listed on the full list actually came to North Carolina.

7. The Democratic National Committee failed to create a separate and segregated account for transferring non-federal funds to the North Carolina Democratic Party as required by the June 15, 1998 Ruling of the State Board.

8. The disclosure requirements and mandates as to setup of banking accounts contained in the June 15, 1998 Ruling was and continues not to have been effected by the 1999 amendment to GS 163-278.13 (e). The current banking practices, by the Democratic National Committee, of non-federal “soft money” intended for the North Carolina Democratic Party, violate the requirement of the Board’s June 15, 1998 ruling on “soft money” and makes it impossible to know specifically the source of the money coming to North Carolina.

CONCLUSIONS

1. The State Board has the jurisdiction and duty under GS 163-278.22 (7), to investigate, review, conduct hearings upon suspected violations, and enforce the statutes, rules and regulations of the State of North Carolina as to political fundraising issues. This includes, but is not limited to complaints involving “soft money” in election campaigns.

2. Except for the 1999 amendment to GS 163-278.13(e), the collection and distribution of “soft” non-federal money in unlimited amounts by both the Republican and Democratic National Committees in North Carolina elections, would have been a violation of the State Board’s June 15, 1998 Ruling. The Board should not, by it’s use of temporary rule making, attempt to circumvent the effect of the General Assembly’s 1999 amendment to GS 163-278.13(e) that allows the present actions as to non-federal “soft money” that is the subject matter of this complaint.

3. It is very clear, however, that sixteen thousand dollars (\$16,000) given to the North Carolina Republican Party by the Republican National Committee is improper in that it was received from business entities. Said funds should be refunded by the North Carolina Republican Party.

4. The Democratic National Committee has failed to maintain a separate and segregated account for non-federal soft money destined for North Carolina. This particular banking requirement is required under the June 15, 1998 Ruling of the Board.

5. It appears that the Republican National Committee banking setup as to non-federal North Carolina "soft money" is proper and meets the requirements of the Board's ruling.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. The relief requested by the petitioners in their September 14, 2000 complain is allowed in part and denied in part.
2. The North Carolina Republican Party, at once, shall return to the Republican National Committee the sixteen thousand dollars (\$16, 000.00) in improper business contributions made to it, as set out above.
3. The Democratic National Committee, within fifteen days from their receipt of this order, shall create and utilize a separate and segregated bank account for "soft money" that is to be sent to the North Carolina as per the Board's June 15, 1998 Ruling. The Democratic National Committee is encouraged to seek guidance and advice, if needed, from the board and its staff in implanting this account.

This the 27th day of October, 2000.

FOR THE STATE BOARD OF ELECTIONS

Larry Leake, Chairman

**Gary O. Bartlett,
Executive Secretary-Director**

N.C. Provisions Relevant to National Party Soft Money.

Corporate, etc. ban.

- 163-278.19** Total ban on money from corporations, other business entities, unions, and professional associations from making contributions or expenditures, *directly or indirectly*, in North Carolina elections.
- .19(a1)** Indirect contributions spelled out. (1999)

No giving “in the name of another.”

- 163-278.14** No contribution may be laundered through another person. SBOE considers a contribution to a party that is earmarked to go to a candidate to be in violation of this section.

\$4,000 limit and exceptions.

- 163-278.13** Contribution limit of \$4,000 to N.C. candidates and political committees.
- .13(e)** Exemption from \$4,000 contribution for national, State, district, and county party executive committees. (Word “national” added in 1999.)

Policing by State Board of Elections (SBOE)

- 163-278.21** SBOE may promulgate rules to prevent the circumvention of N.C. campaign finance law. (1999)
- 150B-21.1(a5)** SBOE has special authority to promulgate temporary rules under the Administrative Procedure Act. (1999)
- 163.278.7A** Federal political committees may contribute into the North Carolina election system if they comply with reporting requirements of SBOE and stay within N.C. contribution limits.
- 1998 SBOE Opinion** If North Carolina parties receive contributions from national party soft money accounts:
- Those contributions must go only to the State party executive committee, not to district or county party executive committees.
 - Both national party and State party must keep that money in separate segregated accounts. National party must be able to ensure that corporate, etc., money is screened out.
 - State party must use the soft money only for non-candidate activities.

**Approaches to Dealing with National Party Soft Money
(NPSM) in North Carolina Elections.**

I. Ban NPSM totally in N.C. elections. (*Connecticut approach*)

- A. Ban all contributions but allow independent expenditures from NPSM.
- B. Ban all contributions and all independents expenditures from NPSM.

If NPSM is allowed in North Carolina, choices might be made under II and III below.

II. How to limit (or not limit) money going into NPSM account for North Carolina

	What Kind	How Much	What Route
A.	None from corporations, etc.	From individuals and PACs only up to \$4,000.	Donor must write check directly to NPSM N.C. account, not to party generally.
B.	None from corporations, etc.	From individuals and PACs only up to \$4,000.	Donor may write check to national party generally, which can apply eligible donations to N.C. account as needed.
C.	None from corporations, etc.	From individuals and PACs without limit.	Donor must write check directly to NPSM N.C. account, not party generally.
D.	None from corporations, etc.	From individuals and PACs without limit.	Donor may write check to national party generally, which can apply to eligible donations to N.C. account as needed.
E.	Any source acceptable.	Any amount acceptable.	Donor must write check directly to NPSM N.C. account, not to party generally.
F.	Any source acceptable.	Any amount acceptable.	Donor may write check to national party generally, which can apply eligible donations to N.C. account as needed.

III. How to limit (or not limit) contributions made from NPSM to N.C. recipients:

	To Whom	In What Amount	For What Purpose
A.	To State Party only.	\$4,000 limit.	For non-candidate activities only.
B.	To State Party only.	\$4,000 limit.	For any purpose, including contributions to candidates.
C.	To State Party only.	Limit higher than \$4,000.	For non-candidate activities only.
D.	To State Party only.	Limit higher than \$4,000.	For any purpose, including contributions to candidates.
E.	To State Party only.	No dollar limit.	For non-candidate activities only.
F.	To State Party only.	No dollar limit.	For any purpose, including contributions to candidates.
G.	Only to State Party and other party executive committees	\$4,000 limit.	For non-candidate activities only.
H.	Only to State Party and other party executive committees.	\$4,000 limit.	For any purpose, including contributions to candidates.
I.	To any political committee or candidate.	<ul style="list-style-type: none"> • Higher-than-\$4,000 for State Party. • \$4,000 for other recipients. 	<ul style="list-style-type: none"> • For State Party, only for non-candidate activities. • For other recipients, for any purpose.
J.	To any political committee or candidate.	<ul style="list-style-type: none"> • No limit for State Party. • \$4,000 for other recipients. 	<ul style="list-style-type: none"> • For State Party, only for non-candidate activities. • For other recipients, for any purpose.
K.	To any political committee or candidate.	<ul style="list-style-type: none"> • No limit for State Party. • \$4,000 for other recipients. 	For any purpose, including contributions to candidates.
L.	To any political committee or candidate.	No limit.	For any purpose, including contributions to candidates.

SEPARATE QUESTIONS:

- Should N.C. retain the exemption from the \$4,000 limit for contributions to and from N.C. party executive committees?
- Should it exempt contributions to the parties from the \$4,000 limit, but apply the \$4,000 to contributions from the parties to candidates?
- How should N.C. deal with use in N.C. elections of hard-money accounts of National Parties?
- How should N.C. deal with use in N.C. elections of money from party committees and other committees from other states?

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LEGISLATIVE PROPOSAL II: Ballot Access Changes.

BI

Committee: General Assembly
Date: January 24, 2001
Version: Legislative Proposal II

Introduced by: Election Laws Revision Com.
Summary by: William R. Gilkeson
Staff Attorney

1

2 **SUMMARY:** *Legislative Proposal II would make several changes to the ballot*
3 *access laws, conforming statutes to court decisions and, further, reducing some*
4 *of the barriers to ballot access for new parties and unaffiliated candidates.*
5 *Most significantly, the bill would:*

- 6 • *Move forward the deadlines for filing new party and unaffiliated*
7 *candidate petitions.*
8 • *Move forward the deadlines for new parties to nominate candidates.*
9 • *Reduce by more than half the number of signatures unaffiliated*
10 *candidates must collect to gain access to the statewide ballot.*

11 **CURRENT LAW:** New parties have a deadline of June 1 to submit petitions to
12 the State Board of Elections to be on the statewide ballot. But, since those
13 petitions must be submitted 2 weeks ahead to county boards of elections for
14 verification of signatures, the real deadline is mid-May. The last Friday in July is
15 the State Board petition deadline for unaffiliated candidates. But again, the 2-
16 week verification lead-time means the real deadline for unaffiliated statewide
17 candidates is mid-June.

18 New parties must nominate their candidates (in a convention) by July 1. Current
19 statute says they may nominate them only for statewide and congressional
20 offices, even though a court decision more than 10 years ago has made that
21 limitation unenforceable. In practice, new parties are allowed to nominate
22 candidates at all levels.

23 The statute prescribes the wording of new party petitions: It says the undersigned
24 "intend to organize" the new party. The prescribed wording also requires the
25 home address of the State party Chair.

26 Unaffiliated candidates must collect petition signatures equal to a percentage of
27 the total registered voters in the electorate: 2% statewide and 4% for district and
28 county offices. Two percent of all registered voters in the State amounts to about
29 102,000 signatures. New parties, on the other hand, must collect 2% of the
30 number of voters in the last Governor's race. That now amounts to 58,842
31 signatures.

32 If a party's nominee fails to get at least 10% of the vote in either the Governor's
33 race or the Presidential race, that party loses the right to put its candidates on the

1 ballot next time. To regain that right, it must repeat the process of collecting
2 petition signatures. When the party loses its ballot status, voters can no longer be
3 officially affiliated with that party on the voter registration records. The county
4 board of elections must notify that voter that, unless the voter indicates a desire to
5 become affiliated with a remaining party, the voter's party status will be listed as
6 "Unaffiliated."

7 **LEGISLATIVE PROPOSAL II:** Legislative Proposal II would make the
8 following changes:

- 9 1. Deadlines. Move the State Board deadlines for both new party and
10 unaffiliated candidate petitions to the last Friday in July. *Sections 1 and 5*
11 *of the bill.* Petitions would have to be in to county boards by mid-July.
12 New parties would have to nominate candidates by the 90th day before the
13 general election. *Section 4.* Presidential candidates could be nominated
14 up till 2 days after a national nominating convention, but no later than
15 August 20. *Section 6.* The unenforceable prohibition on nominating local
16 candidates would be removed. *Section 4.*
- 17 2. Petition Wording. Change the prescribed petition wording to say that the
18 undersigned wish the party to appear on the ballot. It would require a
19 mailing address for the party's State headquarters, rather than the Chair's
20 home address.
- 21 3. Number of Petition Signatures for Unaffiliated Candidate. Use the number
22 of voters in the last Governor's race, rather than the number of registered
23 voters, as the benchmark for the percentage to determine the required
24 signatures for an unaffiliated candidate. In addition, the bill would drop
25 the percentage for statewide candidates from 2% to 1.5%. The effect of
26 both changes would be a drop of 57% in the number of signatures
27 required for a statewide candidacy, from about 102,000 to 44,009.
- 28 4. Voter Affiliation with Expired Party. Allow voter's affiliated with a party
29 to keep their affiliation with that party even after the party loses its ballot
30 status.

31 **EFFECTIVE DATE:** The bill would become effective January 1, 2002.

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Member of the United States House of Representatives		Appropriate district executive committee of political party in which vacancy occurs
Judge of district court		
District Attorney		
State Senator in a multi-county senatorial district		
Member of State House of Representatives in a multi-county representative district		
State Senator in a single-county senatorial district		County executive committee of political party in which vacancy occurs, provided, in the case of the State Senator or State Representative in a single-county district where
Member of State House of Representatives in a single-county representative district		
Any elective county office not all the county is located in that district, then in voting, only those members of the county executive committee who reside within the district shall vote		

The party executive making a nomination in accordance with the provisions of this section shall certify the name of its nominee to the chairman of the board of elections, State or county, charged with the duty of printing the ballots on which the name is to appear. If at the time a nomination is made under this section the general election ballots have already been printed, the provisions of G.S. 163-139 shall apply. If any person nominated as a candidate of a political party vacates such nomination and such vacancy arises from a cause other than death and the vacancy in nomination occurs more than 120 days before the general election, the vacancy in nomination may be filled under this section only if the appropriate executive committee certifies the name of the nominee in accordance with this paragraph at least 75 days before the general election.

In a county not all of which is located in one congressional district, in choosing the congressional district executive committee member or members from that area of the county, only the county convention delegates or county executive committee members who reside within the area of the county which is within the congressional district may vote.

In a county which is partly in a multi-county senatorial district or which is partly in a multi-county House of Representatives district, in choosing that county's member or members of the senatorial district executive committee or House of Representatives district executive committee for the multi-county district, only the county convention delegates or county executive

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committee members who reside within the area of the county which is within that multi-county district may vote."

Section 2. G.S. 163-128 reads as rewritten:

"§ 163-128. Election precincts and voting places established or altered.

(a) Each county shall be divided into a convenient number of precincts for the purpose of voting. Upon a resolution adopted by the county board of elections and approved by the Secretary-Director of the State Board of Elections voters from a given precinct may be temporarily transferred, for the purpose of voting, to an adjacent precinct. Any such transfers shall be for the period of time equal only to the term of office of the county board of elections making such transfer. When such a resolution has been adopted by the county board of elections to assign voters from more than one precinct to the same precinct, then the county board of elections shall maintain separate registration and voting records, consistent with the procedure prescribed by the State Board of Elections, so as to properly identify the precinct in which such voters reside. The polling place for a precinct shall be located within the precinct or on a lot or tract adjoining the precinct.

Except as provided by Article 12A of this Chapter, the county board of elections shall have power from time to time, by resolution, to establish, alter, discontinue, or create such new election precincts or voting places as it may deem expedient. Upon adoption of a resolution establishing, altering, discontinuing, or creating a precinct or voting place, the board shall give 45 days' notice thereof prior to the next primary or election. Notice shall be given by advertisement in a newspaper having general circulation in the county, by posting a copy of the resolution at the office of the county board of elections, and by mailing a copy of the resolution to the chairman of every political party in the county. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice. No later than 30 days prior to the primary or election, the county board of elections shall mail a notice of precinct change to each registered voter who as a result of the change will be assigned to a different voting place.

(b) Each county board of elections shall prepare a map of the county on which the precinct boundaries are drawn or described, shall revise the map when boundaries are changed, and shall keep a copy of the current map on file and posted for public inspection at the office of the Board of Elections, and shall file a copy with the State Board of Elections."

Section 3. G.S. 163-254 reads as rewritten:

"§ 163-254. Registration and voting on primary or election day.

Notwithstanding any other provisions of Chapter 163 of the General Statutes, any person entitled to vote an absentee ballot pursuant to G.S. 163-245 who is absent in any of the capacities specified in that section at the time the registration records close for an election but who returns to that person's county of residence in North Carolina thereafter shall be permitted to register in person at any time including the day of a primary or election. Should such person's eligibility to register or vote as provided in G.S. 163-245 terminate after the twenty-fifth day prior to a primary or election, such person, if he appears in person, shall be entitled to register if otherwise qualified after the twenty-fifth day before the primary or election, or on the primary or election day, and shall be permitted to vote if such person is otherwise qualified."

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Section 4. G.S. 163-227.3 reads as rewritten:

"§ 163-227.3. Date by which absentee ballots must be available for voting.

(a) The State Board of Elections shall provide absentee ballots of the kinds to be furnished by the State Board, to the county boards of elections 50 days prior to the date on which the election shall be conducted unless there shall exist an appeal before the State Board or the courts not concluded, in which case the State Board shall provide the ballots as quickly as possible upon the conclusion of such an appeal. In every instance the State Board shall exert every effort to provide absentee ballots, of the kinds to be furnished by the State Board, to each county by the date on which absentee voting is authorized to commence. In any case where absentee ballots are printed by the county board of elections, that county board shall follow the direction of the State Board in delaying absentee ballots while an appeal is pending and in providing them as soon as possible thereafter.

(b) Second Primary. -- The State Board of Elections shall provide absentee ballots, of the kinds to be furnished by the State Board, as quickly as possible after the ballot information has been determined."

Section 5. G.S. 163-278.39(a)(3) is repealed.

Section 6. G.S. 120-163 reads as rewritten:

"§ 120-163. Petition.

(a) The process of seeking the recommendation of the Commission is commenced by filing with the Commission a petition signed by fifteen percent (15%) of the registered voters of the area proposed to be incorporated, but by not less than 25 registered voters of that area, asking for incorporation. The voter shall sign the petition and also clearly print that voter's name adjacent to the signature. The petition must also contain the voter's residence address and date of birth.

(b) The petition must be verified by the county board of elections of the county where the voter is alleged to be registered. The board of elections shall cause to be examined the signature, shall place a check mark beside the name of each signer who is qualified and registered to vote in that county in the area proposed to be incorporated, and shall attach to the petition a certificate stating the number of voters registered in that county in the area proposed to be incorporated, and the total number of registered voters who have been verified. The county board of elections shall return the petition to the person who presented it within 15 working days of receipt. That period of 15 working days shall be tolled for any period of time that is also either two weeks before or one week after a primary or election being conducted by the county board of elections.

(c) The petition must include a proposed name for the city, a map of the city, a list of proposed services to be provided by the proposed municipality, the names of three persons to serve as interim governing board, a proposed charter, a statement of the estimated population, assessed valuation, degree of development, population density, and recommendations as to the form of government and manner of election. The petition must contain a statement that the proposed municipality will have a budget ordinance with an ad valorem tax levy of at least five cents (5¢) on the one hundred dollar (\$100.00) valuation upon all taxable property within its corporate limits. The petition must contain a statement that the proposed municipality will offer four of the following services no later than the first day of the third fiscal year following the effective date of the incorporation: (i) police protection; (ii) fire protection; (iii) solid waste

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collection or disposal; (iv) water distribution; (v) street maintenance; (vi) street construction or right-of-way acquisition; (vii) street lighting; and (viii) zoning. In order to qualify for providing police protection, the proposed municipality must propose either to provide police service or to have services provided by contract with a county or another municipality that proposes that the other government be compensated for providing supplemental protection. The proposed municipality may not contain any noncontiguous areas.

(d) The petitioners must present to the Commission the verified petition from the county board of elections.

(e) A petition must be submitted to the Commission at least 60 days prior to convening of the next regular session of the General Assembly in order for the Commission to make a recommendation to that session."

Section 7. G.S. 163-192.1 reads as rewritten:

"§ 163-192.1. Mandatory recounts.

(a) Whenever, according to the canvass made under this Article, the difference between the number of votes received by a candidate who:

- (1) Has received the number of votes necessary to be declared nominated for an office in a primary election with a majority; or
- (2) Received the number of votes necessary to be declared nominated for an office in a second primary election

and the number of votes received by any candidate in the race is not more than one percent (1%) of the total votes which were cast for that office, except in multi-seat races one percent (1%) of the total votes cast for those two candidates, the State Board of Elections shall, before declaring the person nominated, order a recount of the primary if a candidate whose votes, according to a tally of the canvasses made under Article 15 of this Chapter, fell within one percent (1%) of a successful candidate shall, by noon on the eighth day (Saturdays and Sundays included) following the election, request in writing such a recount. Provided, however, that in a statewide contest, no candidate shall be entitled to an automatic recount under this section unless the difference is no greater than one-half of one percent (0.5%) of the votes cast, or 10,000 votes, whichever is less. Provided further that if the canvass made under this Article determines that a candidate who was not originally thought to be within the percentage entitling him to a recount based on the tally of canvasses made under Article 15 of this Chapter is in fact within the percentage entitling him to a recount, the Executive Secretary-Director of the State Board of Elections shall immediately notify the candidate and the candidate shall be entitled to a recount if he so requests within 48 hours of notification.

(b) Whenever, according to the canvass made under this Article, the difference between the number of votes received by a candidate who has been declared elected to an office in a general election and the number of votes received by any other candidate in the race shall be not more than one percent (1%) of the total votes which were cast for that office, except in multi-seat races one percent (1%) of the total votes cast for those two candidates, or where there is a tie vote between those candidates, the State Board of Elections shall, before certifying the result to the Secretary of State under G.S. 163-193, order a recount of the election if a candidate whose votes, according to a tally of the canvasses made under Article 15 of this Chapter, fell within one

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percent (1%) of a successful candidate (or in the case of a tie, either candidate) shall, by noon on the eighth day (Saturdays and Sundays included) following the election, request in writing such a recount. Provided, however, that in a statewide contest, no candidate shall be entitled to an automatic recount under this section unless the difference is no greater than one-half of one percent (0.5%) of the votes cast, or 10,000 votes, whichever is less. Provided further that if the canvass made under this Article determines that a candidate who was not originally thought to be within the percentage entitling him to a recount based on the tally of canvasses made under Article 15 of this Chapter is in fact within the percentage entitling him to a recount, the Executive Secretary-Director of the State Board of Elections shall immediately notify the candidate and the candidate shall be entitled to a recount if he so requests within 48 hours of notification.

- (c) The recount shall be conducted under the supervision of the State Board of Elections.
- (d) This section applies to the offices listed in G.S. 163-192."

Section 8. This act is effective when it becomes law.

LEGISLATIVE PROPOSAL OF ELECTION LAWS REVISION COMMISSION



LEGISLATIVE PROPOSAL III: Miscellaneous Changes.

BI

Committee: General Assembly
Date: January 24, 2001
Version: Legislative Proposal III

Introduced by: Election Laws Revision Com.
Summary by: William R. Gilkeson
Staff Attorney

1

2 **SUMMARY:** *Legislative Proposal III would make several changes to the*
3 *election laws. Most significantly, the bill would require county boards of*
4 *elections to mail to any affected voter a 30-day notice of a change to that*
5 *voter's precinct.*

6

7 **CURRENT LAW:** North Carolina gives county boards of elections the
8 authority to change the boundaries of precincts and to change voting places. If it
9 does either of those things, the board is required to give public notice of the
10 change 45 days before the next election in the following three ways: by placing
11 an ad in a newspaper of general circulation in the county, by posting a notice on
12 the courthouse door, and by mailing notice to the chairs of the county political
13 parties. Some counties mail notices to all affected voters, but the statutes do not
14 require that.

15 North Carolina statutes, read together with federal statutes, have been determined
16 by counsel for the State Board of Elections to say that military and certain official
17 overseas voters, if they are absent on the last day of registration but return by
18 election day, have the right to both register and vote on election day. But North
19 Carolina statutes do not clearly state that principle.

20 Current law is unclear on the question of who fills the vacancy on a presidential
21 ticket or among presidential electors.

22 A 1987 statute required a sponsor to state in a political ad its position for or
23 against the candidate if the ad takes a position for or against a candidate. That
24 provision was transferred in 1999 to a new statute and the newer concept of
25 express advocacy was applied to it. In 2000, a federal District Court judge stayed
26 the enforcement of the statute on the ground that it was unconstitutional.
27 Defenders of the lawsuit have stated that the provision appears to be of little use.

28 The statute about incorporation of municipalities gives county boards of elections
29 a rigid 15 days to verify petitions for incorporation. It does not make an exception
30 if the 15 days falls during the preparation for an election.

31 A statute on statewide mandatory recounts says that the runner-up has the right to
32 a recount if the margin of victory is "*at least* one half of one percent (0.5%) or

1 10,000 votes, whichever is less." The apparent intent is to say "*no greater* than
2 one half, etc."

3 **LEGISLATIVE PROPOSAL III:** Legislative Proposal III would make the
4 following changes:

5 1. Precinct Change Notice. Require mailed notices to any registered voter
6 affected by a precinct line change or voting place change at least 30 days
7 before an election. Also change the notice by posting on the courthouse
8 door to a notice by posting in the county board of elections office. *Section 2 of*
9 *the bill.*

10 2. Military/Overseas Voter Rights. Clarify that military/overseas voters, if
11 absent in their occupational capacities on the day registration closes but
12 are present on election day, have a right to register and vote on election
13 day. *Section 3.*

14 3. Filling National Ticket Vacancy. Designate the national party executive
15 committee as the entity to fill a vacancy on a presidential or vice
16 presidential ticket. *Section 1.*

17 4. Repeal of Ad Labeling Requirement. Repeal the section of the political-ad
18 labeling statute that says an ad must state its position for or against a
19 candidate if that ad supports or opposes the nomination or election of that
20 candidate. *Section 5.*

21 5. Toll 15-Day Petition-Processing Law During Election Rush. Suspend the
22 15-day deadline given to county boards of elections to process municipal
23 incorporation petitions during the two weeks before or one week after an
24 election. *Section 6.*

25 6. Correct Confusing Recount Wording. Change from the wording of the
26 formula for a statewide mandatory recount, replacing the term "at least"
27 with the term "no greater than" so that the formula makes sense. *Section 7.*

28 **EFFECTIVE DATE:** The bill would be effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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BILL DRAFT 2001-RRz-9 [v.1] (01/17)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

1/17/2001 3:53:31 PM

Short Title: Municipal Election Bds.

(Public)

Sponsors: .

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ABOLISH MUNICIPAL BOARDS OF ELECTIONS, REQUIRING
3 THAT ALL ELECTIONS BE CONDUCTED BY COUNTY BOARDS OF
4 ELECTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-280 is repealed.

Section 2. Article 23 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-280.1. Municipal boards of elections abolished.

Municipal boards of elections, whether created by General Statute or by local act, are abolished. The terms of all members of municipal boards of elections and all precinct officials appointed by municipal board of elections, if those terms have not expired prior to January 1, 2000, expire January 1, 2000."

Section 3. G.S. 163-281 is repealed.

Section 4. G.S. 163-284 is repealed.

Section 5. G.S. 163-284.1 is repealed.

Section 6. G.S. 163-285 reads as rewritten:

"§ 163-285. Administration by county board of elections; ~~optional by municipality.~~
elections.

(a) Any city, town or incorporated village which conducts its elections on a nonpartisan basis may conduct its own elections, or it may request the county board of elections of the county in which it is located to conduct its elections.—A county board of elections shall have authority for the registration of voters for and shall conduct the elections of each city, town or incorporated village so requesting —municipality and special district in that county and the city, town or incorporated village —municipality or special district shall pay the cost thereof according to a formula mutually agreed upon by the county board of elections and the city council.—council or special district governing authority.If a mutual agreement cannot be reached, then the State Board

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of Elections shall prescribe the agreement, to which both parties are bound, or, in its discretion, the State Board of Elections shall have authority to instruct the county board of elections to decline the administration of the elections for such city, town or incorporated village bound.

- (1) The elections of ~~cities, towns or incorporated villages~~ municipalities or special districts which lie in more than one county shall be conducted either (i) by the county in which the greater number of the city's ~~citizens~~ residents or special district's residents reside, according to the most recent federal census of population, or (ii) jointly by the boards of elections of each county in which such ~~city, town or incorporated village~~ municipality or special district is located, as may be mutually agreed upon by the county boards of elections so affected, or (iii) by a ~~municipal board of elections appointed by the governing body of the municipality.~~ affected. The State Board of Elections shall have authority to promulgate regulations for more detailed administration and conduct of ~~municipal or special district~~ municipal or special district elections by county ~~or municipal~~ boards of elections for ~~cities or special districts~~ cities or special districts situated in more than one county.
- (2) ~~Any city, town or incorporated village electing to have its elections conducted by the county board of elections as provided by this section, shall do so no later than January 1, 1973 provided, however, the county board of elections shall be entitled to 90 days' notice prior to the effective date decided upon by the municipality. For efficient administration the State Board of Elections shall have the authority to delay the effective date of all such agreements under this section and shall set a date certain on which such agreements shall commence. The State Board of Elections shall also have the authority to permit any city, town or incorporated village to exercise the options under this Article subsequent to the deadline stated in this section.~~
- (3) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 63.

(b) The county board of elections shall have authority to require maps or definitive outlines of the boundaries constituting any municipality or special district whose elections that county board administers and shall be immediately advised of any change or relocation of such boundaries.

(c) Any contested election or allegations of irregularities in a municipal or special district election shall be made to the county board of elections and appeals from such rulings may be made to the State Board of Elections under existing statutory provisions and rules or regulations adopted by the State Board of Elections.

(d) The term 'special district' includes a sanitary district, fire district, or school administrative unit, notwithstanding the fact that the taxes of the special district may be levied by a city."

Section 7. G.S. 163-286(b) is repealed.

Section 8. G.S. 163-287 reads as rewritten:

"§ 163-287. Special elections; procedure for calling.

~~Any city, whether its elections are conducted by the county board of elections or the municipal board of elections,~~ city or any special district shall have authority to call special elections as permitted by law. Prior to calling a special election, the city council or the governing body of the special district shall adopt a resolution specifying the details of the election, and forthwith deliver

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the resolution to the appropriate board of elections. The resolution shall call on the board of elections to conduct the election described in the resolution and shall state the date on which the special election is to be conducted. The special election may be held at the same time as any other State, county or municipal primary, election or special election or referendum, but may not otherwise be held within the period of time beginning 30 days before and ending 30 days after the date of any other primary, election, special election or referendum held for that city or special district.

Legal notice of the special election shall be published no less than 45 days prior to the special election. The appropriate board of elections shall be responsible for publishing the legal notice. The notice shall state the date and time of the special election, the issue to be submitted to the voters, and the precincts in which the election will be held. This paragraph shall not apply to bond elections."

Section 9. G.S. 163-288 reads as rewritten:

"§ 163-288. Registration for city elections; county and municipal boards of elections.

~~Regardless of whether the municipal election is conducted by the county board of elections or by a municipal board of elections, the~~ The registration record of the county board of elections shall be the official registration record for voters to vote in all elections, city, district, county, State or national."

Section 10. G.S. 163-288.1 reads as rewritten:

"§163-288.1. Activating voters for newly annexed or incorporated areas.

(a) Whenever any new city or special district is incorporated or whenever an existing city or district annexes any territory, the city or special district shall cause a map of the corporate or district limits to be prepared from the boundary descriptions in the act, charter or other document creating the city or district or authorizing or implementing the annexation. The map shall be delivered to the county ~~or municipal~~ board of elections conducting the elections for the city or special district. The board of elections shall then activate for city or district elections each voter eligible to vote in the city or district who is registered to vote in the county to the extent that residence addresses shown on the county registration certificates can be identified as within the limits of the city or special district. Each voter whose registration is thus activated for city or special district elections shall be so notified by mail. The cost of preparing the map of the newly incorporated city or special district or of the newly annexed area, and of activating voters eligible to vote therein, shall be paid by the city or special district. In lieu of the procedures set forth in this section, the county board of elections may use either of the methods of registration of voters set out in G.S. 163-288.2 when activating voters pursuant to the incorporation of a new city or election of city officials or both under authority of an act of the General Assembly or when activating voters after an annexation of new territory by a city or special district under Chapter 160A, Article 4A, or other general or local law.

(b) Each voter whose registration is changed by the county ~~or municipal~~ board of elections in any manner pursuant to any annexation or expunction under this subsection shall be so notified by mail.

(c) The State Board of Elections shall have authority to adopt regulations for the more detailed administration of this section."

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Section 11. G.S. 163-289(c) is repealed.

Section 12. G.S. 163-298 reads as rewritten:

"§163-298. Municipal primaries and elections.

~~The phrases 'county board of elections,' and 'chairman of the board of elections' as used in this Article, with respect to all municipal primaries and elections, shall mean the municipal board of elections and its chairman in those cities and towns which conduct their own elections, and the county board of elections and its chairman in those cities and towns whose elections are conducted by the county board of elections. The words 'general election,' as used in this Article, shall include regular municipal elections, runoff elections, and nonpartisan primaries, except where specific provision is made for municipal elections and nonpartisan primaries."~~

Section 13. G.S. 163-299(g) reads as rewritten:

" (g) ~~The county or municipal~~ board of elections shall, in addition to the requirements contained in G.S. 163-175 canvass the results in a nonpartisan municipal primary, election or runoff election, and in a special district election, the number of legal votes cast in each precinct for each candidate, the name of each person voted for, and the total number of votes cast in the municipality or special district for each person for each different office."

Section 14. G.S. 163-300 reads as rewritten:

"§163-300. Disposition of duplicate abstracts in municipal elections.

Within five days after a primary or election is held in any municipality, the chairman of the county ~~or municipal~~ board of elections shall mail to the chairman of the State Board of Elections, the duplicate abstract prepared in accordance with G.S. 163-176. One copy shall be retained by the county ~~or municipal~~ board of elections as a permanent record and one copy shall be filed with the city clerk. (1971, c. 835, s. 1.)

Section 15. G.S. 163-301 reads as rewritten:

"§163-301. Chairman of election board to furnish certificate of elections.

Not earlier than five days nor later than 10 days after the results of any municipal election have been officially determined and published in accordance with G.S. 163-175 and G.S. 163-179, the chairman of the county ~~or municipal~~ board of elections shall issue certificates of election, under his hand and seal, to all municipal and special district officers. In issuing such certificates of election the chairman shall be restricted by the provisions of G.S. 163-181."

Section 16. G.S. 163-304 reads as rewritten:

"§ 163-304. State Board of Elections to have jurisdiction over municipal elections ~~and election officials, and to advise; emergency and ongoing administration by county board. advise.~~

(a) ~~Authority and Duty of State Board.~~—The State Board of Elections shall have the same authority over municipal elections ~~and election officials~~ as it has over county and State elections ~~and election officials~~. ~~The State Board of Elections shall advise and assist cities, towns, incorporated villages and special districts, municipal boards of elections, their members and legal officers on the conduct and administration of their elections and registration procedure. elections.~~

~~The city council shall provide written notification to the State Board of Elections of the appointment of each member of its municipal board of elections within five days after the appointment. The municipal board of elections and the city council shall provide such other~~

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~~information about the municipal board of elections as the State Board may require. Members of the municipal board of elections and municipal elections officials shall participate in training provided by the State Board pursuant to G.S. 163-82.24. The State Board shall provide the same training, materials, and assistance to municipal boards of elections that it provides to county boards of elections.~~

The county and municipal boards of elections shall be governed by the same rules for settling controversies with respect to counting ballots or certification of the returns of the vote in any municipal or special district election as are in effect for settling such controversies in county and State elections.

~~(b) — Emergency Administration if Municipal Board Is Not Appointed. — If a city council in a city that has elected pursuant to G.S. 163-285 to conduct its own elections has not appointed a municipal board of elections and reported the appointments to the Executive Secretary Director by March 1 in the year in which the city election is to occur, the Executive Secretary Director shall notify the city council that, unless a municipal board of elections is appointed and the Executive Secretary Director notified of its appointment by April 1 of that year, the county board of elections shall be ordered to conduct that city's elections that year on an emergency basis. If the city council does not so appoint and so notify by April 1, the Executive Secretary Director shall order the county board of elections to conduct the city's elections that year on an emergency basis.~~

~~(c) — Emergency Administration Due to Serious Violations. — If a city council or municipal board of elections has committed violations of the applicable portions of this Chapter prior to a city election and those violations are of such magnitude as to give rise to reasonable doubt as to the ability of the municipal board of elections to conduct that election with competence and fairness, the Executive Secretary Director of the State Board, with the approval of at least four members of the State Board, may order the county board of elections to conduct the remainder of that election on an emergency basis. Before an order is made under this subsection, the city council and municipal board of elections shall be given an opportunity to be heard by the State Board.~~

~~(d) — Ongoing County Administration. — The State Board of Elections may designate the county board of elections as the ongoing agency to conduct a city's elections if all the following conditions are met:~~

- ~~(1) — In more than one election conducted by that city either (i) the city's elections have been administered on an emergency basis pursuant to subsection (b) or (c) of this section or (ii) a new election has been ordered because of irregularities in the city's administration of the election.~~
- ~~(2) — The State Board finds that the interest of the residents of the city in fair and competent administration of elections requires that the city not conduct its own elections.~~
- ~~(3) — The city council and municipal board of elections are given an opportunity to be heard before the State Board.~~
- ~~(4) — The State Board by a vote of at least four of its members designates the county board of elections as the ongoing agency to conduct that city's elections.~~

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~~The city council may not elect to conduct its own elections under G.S. 163-285 until every member of the city council has been elected in a election conducted by the county board of elections after the State Board's designation.~~

~~(e) Reimbursement. If the county board of elections administers a city's elections pursuant to subsection (b), (c), or (d) of this section, the city shall reimburse the county board of elections in the manner set forth in G.S. 163-285. "~~

Section 17. G.S. 163-22 reads as rewritten:

"§ 163-22. Powers and duties of State Board of Elections.

(a) The State Board of Elections shall have general supervision over the primaries and elections in the State, and it shall have authority to make such reasonable rules and regulations with respect to the conduct of primaries and elections as it may deem advisable so long as they do not conflict with any provisions of this Chapter.

(b) From time to time, the Board shall publish and furnish to the county ~~and municipal~~ boards of elections and other election officials a sufficient number of indexed copies of all election laws and Board rules and regulations then in force. It shall also publish, issue, and distribute to the electorate such materials explanatory of primary and election laws and procedures as the Board shall deem necessary.

(c) The State Board of Elections shall appoint, in the manner provided by law, all members of the county boards of elections and advise them ~~and municipal elections board members~~ as to the proper methods of conducting primaries and elections. The Board shall require such reports from the county ~~and municipal~~ boards and election officers as are provided by law, or as are deemed necessary by the Board, and shall compel observance of the requirements of the election laws by county ~~and municipal~~ boards of elections and other election officers. In performing these duties, the Board shall have the right to hear and act on complaints arising by petition or otherwise, on the failure or neglect of a county ~~or municipal~~ board of elections to comply with any part of the election laws imposing duties upon such a board. The State Board of Elections shall have power to remove from office any member of a county ~~or municipal~~ board of elections for incompetency, neglect or failure to perform duties, fraud, or for any other satisfactory cause. Before exercising this power, the State Board shall notify the county ~~or municipal~~ board member affected and give him an opportunity to be heard. When any county board member shall be removed by the State Board of Elections, the vacancy occurring shall be filled by the State Board of Elections. ~~When any municipal board member shall be removed by the State Board of Elections, the vacancy occurring shall be filled by the city council of the city appointing members of that board.~~

(d) The State Board of Elections shall investigate when necessary or advisable, the administration of election laws, frauds and irregularities in elections in any county and municipality and special district, and shall report violations of the election laws to the Attorney General or district attorney or prosecutor of the district for further investigation and prosecution.

(e) The State Board of Elections shall determine, in the manner provided by law, the form and content of ballots, instruction sheets, pollbooks, tally sheets, abstract and return forms, certificates of election, and other forms to be used in primaries and elections. The Board shall furnish to the county ~~and municipal~~ boards of elections the registration application forms

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required pursuant to G.S. 163-67. The State Board of Elections shall direct the county boards of elections to purchase a sufficient quantity of all forms attendant to the registration and elections process. In addition, the State Board shall provide a source of supply from which the county boards of elections may purchase the quantity of pollbooks needed for the execution of its responsibilities. In the preparation of ballots, pollbooks, abstract and return forms, and all other forms, the State Board of Elections may call to its aid the Attorney General of the State, and it shall be the duty of the Attorney General to advise and aid in the preparation of these books, ballots and forms.

(f) The State Board of Elections shall prepare, print, distribute to the county ~~and municipal~~ boards of elections all ballots for use in any primary or election held in the State which the law provides shall be printed and furnished by the State to the counties. The Board shall instruct the county boards of elections as to the printing of county and local ballots.

(g) The State Board of Elections shall certify to the appropriate county boards of elections the names of candidates for district offices who have filed notice of candidacy with the Board and whose names are required to be printed on county ballots.

(h) It shall be the duty of the State Board of Elections to tabulate the primary and election returns, to declare the results, and to prepare abstracts of the votes cast in each county in the State for offices which, according to law, shall be tabulated by the Board.

(i) The State Board of Elections shall make recommendations to the Governor and legislature relative to the conduct and administration of the primaries and elections in the State as it may deem advisable.

(j) Notwithstanding the provisions of any other section of this Chapter, the State Board of Elections is empowered to have access to any ballot boxes and their contents, any voting machines and their contents, any registration records, pollbooks, voter authorization cards or voter lists, any lists of absentee voters, any lists of presidential registrants under the Voting Rights Act of 1965 as amended, and any other voting equipment or similar records, books or lists in any precinct, county, municipality or electoral district over whose elections it has jurisdiction or for whose elections it has responsibility.

(k) Notwithstanding the provisions contained in Article 20 or Article 21 of Chapter 163 the State Board of Elections shall be authorized, by resolution adopted prior to the printing of the primary ballots, to reduce the time by which absentee ballots are required to be printed and distributed for the primary election from 50 days to 45 days. This authority shall not be authorized for absentee ballots to be voted in the general election.

(l) Notwithstanding any other provision of law, in order to obtain judicial review of any decision of the State Board of Elections rendered in the performance of its duties or in the exercise of its powers under this Chapter, the person seeking review must file his petition in the Superior Court of Wake County.

(m) The State Board of Elections shall issue rules to regulate recounts held under the provisions of G.S. 163-179.1 or G.S. 163-192.1.

(n) The State Board of Elections shall provide specific training to county boards of elections regarding rules for registering students.

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(o) The State Board of Elections shall promulgate minimum requirements for the number of pollbooks, voting machines and curbside ballots to be available at each precinct, such that more of such will be available at general elections and a sufficient number will be available to allow voting without excessive delay. The State Board of Elections shall provide for a training and screening program for chief judges and judges. The State Board of Elections shall provide additional testing of voting machines to ensure that they operate properly even with complicated ballots.

The State Board of Elections shall require counties with voting systems to have sufficient personnel available on election day with technical expertise to make repairs in such equipment, to investigate election day problems, and assist in curbside voting."

Section 18. G.S. 163-22.1(a) reads as rewritten:

" (a) State Board's Authority. -- If the State Board of Elections, acting upon the agreement of at least four of its members, and after holding public hearings on election contests, alleged election irregularities or fraud, or violations of elections laws, determines that a new primary, general or special election should be held, the Board may order that a new primary, general or special election be held, either statewide, or in any counties, electoral districts, special districts, or municipalities over whose elections it has jurisdiction. The State Board shall be authorized to order a new election without conducting a public hearing provided a public hearing on the allegations was held by the county ~~or municipal~~ board of elections and the State Board is satisfied that such hearing gave sufficient opportunity for presentation of evidence and provided further that the State Board adopts the findings of the county ~~or municipal~~ board of elections.

Any new primary, general or special election so ordered shall be conducted under applicable constitutional and statutory authority and shall be supervised by the State Board of Elections and conducted by the appropriate elections officials.

The State Board of Elections has authority to adopt rules and regulations and to issue orders to carry out its authority under this section."

Section 19. G.S. 163-25 reads as rewritten:

"§163-25. Authority of State Board to assist in litigation.

The State Board of Elections shall possess authority to assist any county ~~or municipal~~ board of elections in any matter in which litigation is contemplated or has been initiated, provided, the county ~~or municipal~~ board of elections in such county petitions, by majority resolution, for such assistance from the State Board of Elections and, provided further, that the State Board of Elections determines, in its sole discretion by majority vote, to assist in any such matter. It is further stipulated that the State Board of Elections shall not be authorized under this provision to enter into any litigation in assistance to counties, except in those instances where the uniform administration of Chapter 163 of the General Statutes of North Carolina has been, or would be threatened.

The Attorney General shall provide the State Board of Elections with legal assistance in execution of its authority under this section or, in his discretion, recommend that private counsel be employed.

If the Attorney General recommends employment of private counsel, the State Board may employ counsel with the approval of the Governor."

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Section 20. G.S. 163-42 reads as rewritten:

"§ 163-42. Assistants at polls; appointment; term of office; qualifications; oath of office.

Each county ~~and municipal~~ board of elections is authorized, in its discretion, to appoint two or more assistants for each precinct to aid the chief judge and judges. Not more than two assistants shall be appointed in precincts having 500 or less registered voters. Assistants shall be qualified voters of the county in which the precinct is located. When the board of elections determines that assistants are needed in a precinct an equal number shall be appointed from different political parties, unless the requirement as to party affiliation cannot be met because of an insufficient number of voters of different political parties within the county.

In the discretion of the county board of elections, a precinct assistant may serve less than the full day prescribed for chief judges and judges in G.S. 163-47(a).

The chairman of each political party in the county shall have the right to recommend from three to 10 registered voters in each precinct for appointment as precinct assistants in that precinct. If the recommendations are received by it no later than the thirtieth day prior to the primary or election, the board shall make appointments of the precinct assistants for each precinct from the names thus recommended. If the recommendations of the party chairs for precinct assistant in a precinct are insufficient, the county board of elections by unanimous vote of all of its members may name to serve as precinct assistant in that precinct registered voters in that precinct who were not recommended by the party chairs. If, after diligently seeking to fill the positions with registered voters of the precinct, the county board still has an insufficient number of precinct assistants for the precinct, the county board by unanimous vote of all of its members may appoint to the positions registered voters in other precincts in the same county who meet the qualifications other than residence to be precinct officials in the precinct. In making its appointments, the county board shall assure, wherever possible, that no precinct has precinct officials all of whom are registered with the same party. In no instance shall the county board appoint nonresidents of the precinct to a majority of the positions as precinct assistant in a precinct.

In addition, a county board of elections by unanimous vote of all of its members may appoint any registered voter in the county as emergency election-day assistant, as long as that voter is otherwise qualified to be a precinct official. The State Board of Elections shall determine for each election the number of emergency election-day assistants each county may have, based on population, expected turnout, and complexity of election duties. The county board by unanimous vote of all of its members may assign emergency election-day assistants on the day of the election to any precinct in the county where the number of precinct officials is insufficient because of an emergency occurring within 48 hours of the opening of the polls that prevents an appointed precinct official from serving. A person appointed to serve as emergency election-day assistant shall be trained and paid like other precinct assistants in accordance with G.S. 163-46. A county board of elections shall apportion the appointments as emergency election-day assistant among registrants of each political party so as to make possible the staffing of each precinct with officials of more than one party, and the county board shall make assignments so that no precinct has precinct officials all of whom are registered with the same party.

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Before entering upon the duties of the office, each assistant shall take the oath prescribed in G.S. 163-41(a) to be administered by the chief judge of the precinct for which the assistant is appointed. Assistants serve for the particular primary or election for which they are appointed, unless the county board of elections appoints them for a term to expire on the date appointments are to be made pursuant to G.S. 163-41."

Section 21. G.S. 163-135(e) reads as rewritten:

" (e) Municipal Primaries and Elections. -- This Article shall apply to and control all elections held in and for cities, towns, incorporated villages and all special districts, whether conducted by the county board of elections or a duly appointed municipal board of elections."

Section 22. G.S. 163-140(d) reads as rewritten:

" (d) Municipal Primary and Election Ballots. -- In all municipal elections there shall be an official ballot on which shall be printed the names of all candidates for offices in the municipality. The municipal ballot shall conform as nearly as possible to the provisions of subsections (a) through (c) of this section, but on the bottom of the municipal ballot shall be printed an identified facsimile of the signature of the chairman of the county or municipal board of elections, as appropriate."

Section 23. G.S. 163-161 reads as rewritten:

" (d) Municipalities. -- The governing board of the municipality shall have the same authority with respect to the acquisition and use of a voting system for municipal primaries and elections that boards of county commissioners are granted in subsection (a) with respect to other primaries and elections.

The decision of the governing board of the municipality shall be subject to approval of the county board of elections, as described in subsection (a), ~~if the county board of elections administers the elections of the municipality, or by the approval of the municipal board of elections if the municipal board of elections administers the elections of the unit.~~ (a). Before approving the adoption and purchase or lease of a voting system, the county or municipal board of elections shall be subject to all the requirements of subsection (b), ~~except that in the case of a municipal board of elections, the financial statement shall be sent to the municipal attorney and the chief municipal finance officer, the demonstration shall be conducted in the municipality or at a site designated by the State Board of Elections, and the testing shall be done in a precinct of the municipality.~~ (b).

When a municipal governing body has decided to adopt and purchase a voting system for voting places under the provisions of this subsection, that governing body shall have all the duties parallel to those imposed by subsection (c) on a board of county commissioners and a county board of elections: that is, the municipal governing body shall, as soon as practical, provide for each of those voting places sufficient equipment of the approved voting system or, if that is impractical, provide the available equipment of the approved voting system in the places it chooses, and shall appoint the necessary number of voting-system custodians. In the case that equipment of the approved system for every voting place is impractical, the municipal governing board shall choose the voting places and allocate the equipment in a way that as nearly as practicable provides equal access to the voting system for every voter."

Section 24. G.S. 163-278.6(1) reads as rewritten:

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" (1) The term 'board' means the State Board of Elections with respect to all candidates for State and multi-county district offices and the county ~~or municipal~~ board of elections with respect to all candidates for single-county district, county and municipal offices. The term means the State Board of Elections with respect to all statewide referenda and the county ~~or municipal~~ board of elections conducting all local referenda."

Section 25. G.S. 62A-4(b) reads as rewritten:

" (b) The ordinance authorized in subsection (a) of this section may be adopted after one of the following procedures is followed:

- (1) The governing authority by resolution requests the county ~~or municipal~~ board of elections, ~~as appropriate,~~ elections to conduct a special election on a date certain, in which a majority of those voting who are residents of the political subdivision vote to authorize the ordinance.
- (2) After a public hearing held upon not less than 10 days public notice."

Section 26. G.S. 120-30.9F reads as rewritten:

"§ 120-30.9F. Municipalities; municipal attorney.

The municipal attorney of any municipality covered by the Voting Rights Act of 1965 shall submit to the Attorney General of the United States within 30 days:

- (1) Of the time they become laws, any local acts of the General Assembly; and
- (2) Of adoption actions of the municipal governing body ~~or municipal board of elections~~—or any other municipal agency which constitutes a 'change affecting voting' under Section 5 of the Voting Rights Act of 1965 in that municipality; provided that, if required or allowed by regulations or practices of the United States Department of Justice, a municipal attorney may delay submission of any annexation ordinance or group of ordinances until all previously submitted annexation ordinances have been precleared or otherwise received final disposition."

Section 27. This act prevails over local acts.

Section 28. This act becomes effective January 1, 2002, and applies to all primaries and elections held on and after that date.

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LEGISLATIVE PROPOSAL IV: Municipal Election Boards.

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Committee: General Assembly
Date: January 24, 2001
Version: Legislative Proposal IV

Introduced by: Election Laws Revision Com.
Summary by: William R. Gilkeson
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2 **SUMMARY:** *Legislative Proposal IV would abolish municipal boards of*
3 *elections and make county boards of elections responsible for conducting all*
4 *municipal elections.*

5

6 **CURRENT LAW:** North Carolina permits any City Council to establish a
7 municipal board of elections to conduct the election of the City Council. Once
8 more common than now, municipal boards of elections in March 2000 were
9 reportedly in place to conduct elections in 52 cities. Most of those cities were less
10 than 1,000 in total population. Until the mid-1990s, municipal boards of elections
11 had the authority to conduct voter registration. But that authority was removed
12 with the general voter registration rewrite of 1994. Now, the municipal boards
13 that remain use the county board of elections' registration lists to conduct
14 elections for the city. Most of the more than 500 cities in North Carolina enter
15 into a financial agreement with the county board of elections for the county board
16 to conduct city elections.

17 The State Board of Elections has made the abolition of municipal boards of
18 elections one of its top priorities. The State Board maintains that the continuance
19 of the municipal board system thwarts its efforts to supervise and assure quality
20 control of the many municipal elections in the State.

21 The State Board endorsed legislation in 1999 to abolish municipal boards, and the
22 City of Morganton, the largest city with a municipal board, opposed the bill. In
23 response to this debate, the General Assembly make changes in the law, giving
24 the State Board more specific supervisory tools. Those tools included the
25 authority to require a county board takeover of city elections where the municipal
26 board had not followed certain procedures.

27 **LEGISLATIVE PROPOSAL IV:** Legislative Proposal IV would abolish
28 municipal boards of elections. Much of the 28-section bill consists of conforming
29 changes, removing references to municipal boards throughout the statutes. The
30 bill provides in Section 6 that the county board of elections shall conduct all
31 municipal elections. It says the city shall pay the cost according to a formula
32 agreed upon by city and county, or if the two cannot agree, according to a
33 formula prescribed by the State Board of Elections.

34 **EFFECTIVE DATE:** The bill would become effective January 1, 2002.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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BILL DRAFT 2001-RRz-11 [v.2] (01/19)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

1/19/2001 6:22:27 PM

Short Title: Election Rewrite -- 1.

(Public)

Sponsors: .

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REWRITE ARTICLE 13 AND ARTICLE 14 OF CHAPTER 163, AS
3 RECOMMENDED BY THE ELECTION LAWS REVISION COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Articles 13 and 14 of Chapter 163 of the General Statutes are repealed.

SECTION 2. G.S. 163-2 is repealed.

SECTION 3. Chapter 163 of the General Statutes is amended by adding a new Article to read:

"Article 13A

"Voting.

"Part 1.

"DEFINITIONS.

"§ 163-165. Definitions.

In addition to the definitions stated below, the definitions set forth in Article 15A also apply to this Article. As used in this Article:

- (1) 'Ballot' means an instrument on which a voter indicates a choice so that it may be recorded as a vote for or against a certain candidate or referendum proposal. The term 'ballot' may include a paper ballot to be counted by hand, a paper ballot to be counted on an electronic scanner, the face of a lever voting machine, the image on a direct record electronic unit, or a ballot used on any other voting system.
- (2) 'Ballot item' means a single item on a ballot in which the voters are to choose between or among the candidates or proposals listed.
- (3) 'Ballot style' means the version of a ballot within a jurisdiction that an individual voter is eligible to vote. For example, in a county that uses essentially the same official ballot, a group office such as county commissioner may be divided into districts so that different voters in the same county vote for commissioner in

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different districts. The different versions of the county's official ballot containing only those district ballot items one individual voter may vote are the county's different ballot styles.

- (4) 'Election' means the event in which voters cast votes in ballot items concerning proposals or candidates for office in this State or the United States. The term includes primaries, general elections, referenda, and special elections.
- (5) 'Official ballot' means a ballot that has been certified by the State Board of Elections and produced by or with the approval of the county board of elections. The term does not include a sample ballot or a specimen ballot.
- (6) 'Provisional official ballot' means an official ballot that is voted and then placed in an envelope that contains an affidavit signed by the voter certifying identity and eligibility to vote.
- (7) 'Referendum' means the event in which voters cast votes for or against ballot questions other than the election of candidates to office.
- (8) 'Voting booth' means the private space in which a voter is to mark an official ballot.
- (9) 'Voting enclosure' means the room or connected rooms within the voting place that is used for voting.
- (10) 'Voting place' means the building that contains the voting enclosure.
- (11) 'Voting system' means a system of casting and tabulating ballots. The term includes systems of paper ballots counted by hand as well as systems utilizing mechanical and electronic voting equipment.

"Part 2.

"BALLOTS AND VOTING SYSTEMS.

"§ 163-165.1. General rules.

(a) Requirements of Official Ballots in Voting. -- In any election conducted under this Article:

- (1) All voting shall be by official ballot.
- (2) Only votes cast on an official ballot shall be counted.

(b) Compliance With This Article. -- All ballots shall comply with the provisions of this Article.

(c) Other Uses Prohibited. -- An official ballot shall not be used for any purpose not authorized by this Article.

"§ 163-165.2. Sample ballots.

(a) County Board to Produce and Distribute Sample Ballots. -- The county board of elections shall produce sample ballots, in all the necessary ballot styles of the official ballot, for every election to be held in the county. The sample ballots shall be given an appearance that clearly distinguishes them from official ballots. The county board shall distribute sample ballots to the chief judge of every precinct in which the election is to be conducted. The chief judge shall post a sample ballot in the voting place, and may use it for instructional purposes. The county board of elections may use the sample ballot for other informational purposes.

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(b) Document Resembling an Official Ballot to Contain Disclaimer. -- No person other than a board of elections shall produce or disseminate a document substantially resembling an official ballot unless the document contains on its face a prominent statement that the document was not produced by a board of elections and is not an official ballot.

"§ 163-165.3. Responsibilities for preparing official ballots.

(a) State Board to Certify Official Ballots and Instructions to Voters. -- The State Board of Elections shall certify the official ballots and voter instructions to be used in every election that is subject to this Article. In conducting its certification, the State Board shall adhere to the following:

- (1) No later than January 31 of every calendar year, the State Board shall establish a schedule for the certification of all official ballots and instructions during that year. The schedule shall include a time for county boards of elections to submit their official ballots and instructions to the State Board for certification, and times for the State Board to complete the certification.
- (2) The State Board of Elections shall compose model ballot instructions, which county boards of elections may amend subject to approval by the State Board as part of the certification process. The State Board of Elections may permit a county board of elections to place instructions elsewhere than on the official ballot itself, where placing them on the official ballot would be impractical.
- (3) With regard only to multi-county ballot items on the official ballot, the State Board shall certify the accuracy of the content on the official ballot.
- (4) With regard to the entire official ballot, the State Board shall certify that the content and arrangement of the official ballot are in substantial compliance with the provisions of this Article and standards adopted by the State Board.
- (5) The State Board shall proofread the official ballot of every county, if practical, prior to final production.
- (6) The State Board is not required to certify or review every official ballot style in the county, but may require county boards to submit and may review a composite official ballot showing races that will appear in every district in the county.

(b) County Board to Prepare and Produce Official Ballots and Instructions. -- Each county board of elections shall prepare and produce official ballots for all elections in that county. The county board of elections shall submit the format of each official ballot and set of instructions to the State Board of Elections for review and certification in accordance with the schedule established by the State Board. The county board of elections shall follow the directions of the State Board in placing candidates, referenda, and other material on official ballots and in placing instructions.

(c) Special Ballots. -- The State Board of Elections, with the approval of a county board of elections, may produce special official ballots, such as those for disabled voters, where production by the State Board would be more practical than production by the county board.

"§ 163-165.4. Standards for official ballots.

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The State Board of Elections shall seek to ensure that official ballots throughout the State have all the following characteristics:

- (1) Are readily understandable by voters.
- (2) Present all candidates and questions in a fair and nondiscriminatory manner.
- (3) Allow every voter to cast a vote in every ballot item without difficulty.
- (4) Facilitate an accurate vote count.
- (5) Are uniform in content and format, subject to varied presentations required or made desirable by different voting systems.

"§ 163-165.5. Contents of official ballots.

Each official ballot shall contain all the following elements:

- (1) The heading prescribed by the State Board of Elections. The heading shall include the term "Official Ballot."
- (2) The title of each office to be voted on and the number of seats to be filled in each ballot item.
- (3) The names of the candidates as they appear on their notice of candidacy filed pursuant to G.S. 163-106 or G.S. 163-323, or on petition forms filed in accordance with G.S. 163-122. No title, appendage, or appellation indicating rank, status, or position shall be printed on the official ballot in connection with the candidate's name. Nicknames shall be permitted on an official ballot if used in the notice of candidacy or qualifying petition, but the nickname shall appear according to standards adopted by the State Board of Elections. Those standards shall allow the presentation of legitimate nicknames in ways that do not mislead the voter or unduly advertise the candidacy. In the case of candidates for presidential elector, the official ballot shall not contain the names of the candidates for elector but instead shall contain the nominees for President and Vice President which the candidates for elector represent.
- (4) Party designations in partisan ballot items.
- (5) A means by which the voter may cast write-in votes, as provided in G.S. 163-123.
- (6) Instructions to voters, unless the State Board of Elections allows instructions to be placed elsewhere than on the official ballot.
- (7) The printed title and facsimile signature of the chair of the county board of elections.

"§ 163-165.6. Arrangement of official ballots.

(a) Order of Precedence Generally. -- Candidate ballot items shall be arranged on the official ballot before referenda.

(b) Order of Precedence for Candidate Ballot items. -- The State Board of Elections shall promulgate rules prescribing the order of offices to be voted on the official ballot. Those rules shall adhere to the following guidelines:

- (1) Federal offices shall be listed before State and local offices. Federal offices shall be listed according the size of the electorate.
- (2) State and local offices shall be listed according to the size of the electorate.

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- (3) Partisan offices shall be listed before nonpartisan offices.
- (4) When offices are in the same class, they shall be listed in alphabetical order by office name, or in numerical or alphabetical order by district name. Governor and Lieutenant Governor, in that order, shall be listed before other Council of State offices. Mayor shall be listed before other citywide offices. Chair of a board, where elected separately, shall be listed before other board seats having the same electorate. Chief Justice shall be listed before Associate Justices.
- (5) Ballot items for full terms of an office shall be listed before ballot items from partial terms of the same office.

(c) Order of Candidates on Primary Official Ballots. -- The order in which candidates shall appear on a county's official ballots in any primary ballot item shall be determined by the county board of elections using a process designed by the State Board of Elections for random selection.

(d) Order of Party Candidates on General Election Official Ballot. -- Candidates in any ballot item on a general election official ballot shall appear in the following order:

- (1) Nominees of political parties that reflect at least five percent (5%) of statewide voter registration, according to the most recent statistical report published by the State Board of Elections, in alphabetical order of the name of the party.
- (2) Nominees of other political parties, in random order of the name of the party.
- (3) Unaffiliated candidates, in random order.

(e) Straight-Party Voting. -- Each official ballot shall be arranged so that the voter may cast one vote for a party's nominees for all offices except President and Vice President. A vote for President and Vice President shall be cast separately from a straight-party vote. The official ballot shall be prepared so that a voter may cast a straight-party vote, but then make an exception to that straight-party vote by voting for a candidate not nominated by that party or by voting for fewer than all the candidates nominated by that party. Instructions for general election ballots shall clearly advise voters of the rules in this subsection.

(f) Order of Precedence for Referenda. -- The referendum questions to be voted on shall be arranged on the official ballot in the following order:

- (1) Proposed amendments to the State Constitution, in the chronological order in which the proposals were approved by the General Assembly.
- (2) Other referenda to be voted on by all voters in the State, in the chronological order in which the proposals were approved by the General Assembly.
- (3) Referenda to be voted on by fewer than all the voters in the State, in the chronological order of the acts by which the referenda were properly authorized.

"§ 163-165.7. Voting systems: powers and duties of State Board of Elections.

The State Board of Elections shall have authority to approve types, makes, and models of voting systems for use in elections and referenda held in this State. The use of voting systems that have been approved by the State Board of Elections shall be valid in any election or referendum held in any county or municipality. The State Board may also, upon notice and hearing, disapprove types, makes, and models of voting systems. Upon disapproving a type, make, or model of voting system, the State Board shall determine the process by which the disapproved system is discontinued in any county.

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Subject to the provisions of this Chapter, the State Board of Elections shall prescribe rules for the adoption, handling, operation, and honest use of voting systems, including, but not limited to, the following:

- (1) Types, makes, and models of voting systems approved for use in this State.
- (2) Form of official ballot labels to be used on voting systems.
- (3) Operation and manner of voting on voting systems.
- (4) Instruction of precinct officials in the use of voting systems.
- (5) Instruction of voters in the use of voting systems.
- (6) Assistance to voters using voting systems.
- (7) Duties of custodians of voting systems.
- (8) Examination of voting systems before use in an election.

"§ 163-165.8. Voting systems: powers and duties of county boards of commissioners.

The board of county commissioners, with the approval of the county board of elections, may adopt and purchase or lease a voting system of a type, make, and model approved by the State Board of Elections for use in some or all voting places in the county at some or all elections.

The board of county commissioners may decline to adopt and purchase or lease any voting system recommended by the county board of elections, but may not adopt and purchase or lease any voting system that has not been approved by the county board of elections.

"§ 163-165.9. Voting systems: powers and duties of county board of elections.

Before approving the adoption and purchase or lease of any voting system by the board of county commissioners, the county board of elections shall:

- (1) Obtain a current financial statement from the proposed vendor or lessor of the voting system, and send copies of the statement to the county attorney and the chief county financial officer, and
- (2) Witness a demonstration, in that county or at a site designated by the State Board of Elections, of the voting system by the proposed vendor or lessor, and also witness a demonstration of at least one other type of voting system approved by the State Board of Elections.
- (3) Test, during an election, the proposed voting system in at least one precinct in the county where the system would be used if adopted.

"§ 163-165.10. Adequacy of voting system for each precinct.

The county board of elections shall make available for each precinct voting place an adequate quantity of official ballots or equipment so that all voters qualified to vote at the precinct may do so. When the board of county commissioners has decided to adopt and purchase or lease a voting system for voting places under the provisions of G.S. 165-165.8, the board of county commissioners shall, as soon as practical, provide for each of those voting places sufficient equipment of the approved voting system in complete working order. If it is impractical to furnish each voting place with the equipment of the approved voting system, that which has been obtained may be placed in voting places chosen by the county board of elections. In that case, the county board of elections shall choose the voting places and allocate the equipment in a way that as nearly as practicable provides equal access to the voting system for each voter. The county board of elections shall appoint as many voting system custodians as may be necessary for the

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proper preparation of the system for each primary and election and for its maintenance, storage and care."

"Part 3.

"PROCEDURES AT THE VOTING PLACE.

"§ 163-166. Hours for voting.

In every election, the voting place shall be open at 6:30 A.M. and shall be closed at 7:30 P.M. In extraordinary circumstances, the county board of elections may direct that the polls remain open until 8:30 P.M. If any voter is in line to vote at the time the polls are closed, that voter shall be permitted to vote. No voter shall be permitted to vote who arrives at the voting place after the closing of the polls.

§ 163-166.1. Duties of county board of elections.

The county board of elections shall:

- (1) Provide for the timely delivery to each voting place of the supplies, records, and equipment necessary for the conduct of the election; and
- (2) Ensure that adequate procedures are in place at each voting place for a safe, secure, fair, and honest election.
- (3) Assist the precinct officials where necessary with questions and problems.

"§ 163-166.2. Arrangement of the voting enclosure.

Each voting enclosure shall contain at a minimum:

- (1) A sufficient number of private spaces for all voters to mark their official ballots in secrecy.
- (2) Adequate space and furniture for the separate functions of:
 - a. The checking of voter registration records.
 - b. The distribution of official ballots.
 - c. Private discussion with voters concerning irregular situations.
- (3) A telephone or some facility for communication with the county board of elections.

The equipment and furniture in the voting enclosure shall be arranged so that it can be generally seen from the public space of the enclosure.

"§ 163-166.3. Limited access to the voting enclosure.

During the time allowed for voting in the voting place, only the following persons may enter the voting enclosure:

- (1) An election official.
- (2) An observer appointed pursuant to G.S. 163-45.
- (3) A person seeking to vote in that voting place on that day, but only while in the process of voting or seeking to vote.
- (4) A voter in that precinct while entering or explaining a challenge pursuant to G.S. 163-87 or 163-88.
- (5) A person authorized under G.S. 163-166.9 to assist voters, but only while assisting that voter.

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- (6) Persons conducting or participating in a simulated election within the voting place or voting enclosure, if that simulated election is approved by the county board of elections.
- (7) Any other person determined by election officials to have an urgent need to enter the voting enclosure, but only to the extent necessary to address that need.

"§ 163-166.4. Limitation on activity in the voting place and in a buffer zone around it.

No person or group of persons shall hinder access, harass others, distribute campaign literature, place political advertising, solicit votes, or otherwise engage in election-related activity in the voting place or in a buffer zone which shall be prescribed by the county board of elections around the voting place. In determining the dimensions of that buffer zone for each voting place, the county board of elections shall, where practical, set the limit at 50 feet from the entrance to the voting place.

"§ 163-166.5. Procedures at voting place before voting begins.

The State Board of Elections shall promulgate rules for precinct officials to set up the voting place before voting begins. Those rules shall emphasize:

- (1) Continual participation or monitoring by officials of more than one party.
- (2) Security of official ballots, records, and equipment.
- (3) The appearance as well as the reality of care, efficiency, impartiality, and honest election administration.

The county boards of elections and precinct officials shall adhere to those procedures.

"§ 163-166.6. Designation of tasks.

The State Board of Elections shall promulgate rules for the delegation of tasks among the election officials at each precinct. Those rules shall emphasize:

- (1) The need to place primary managerial responsibility upon the chief judge.
- (2) The need to have maximum multi-party participation in all duties where questions of partisan partiality might be raised.
- (3) The need to provide flexibility of management to the county board of elections and to the chief judge, in consideration of different abilities of officials, the different availability of officials, and the different needs of voters precinct by precinct.

"§ 163-166.7. Voting procedures.

(a) Checking Registration. -- A person seeking to vote shall enter the voting enclosure through the appropriate entrance. A precinct official assigned to check registration shall at once ask the voter to state current name and residence address. The voter shall answer by stating current name and residence address. In a primary election, that voter shall also be asked to state, and shall state, the political party with which the voter is affiliated or, if unaffiliated, the authorizing party in which the voter wishes to vote. After examination, that official shall state whether that voter is duly registered to vote in that precinct and shall direct that voter to the voting equipment or to the official assigned to distribute official ballots.

(b) Distribution of Official Ballots. -- If the voter is found to be duly registered and has not been successfully challenged, the official assigned to distribute the official ballots shall hand the voter the official ballot that voter is entitled to vote, or that voter shall be directed to the voting

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equipment that contains the official ballot. No voter in a primary shall be permitted to vote in more than one party's primary. The precinct officials shall provide the voter with any information the voter requests to enable that voter to vote as that voter desires.

(c) The State Board of Elections shall promulgate rules for the process of voting. Those rules shall emphasize the appearance as well as the reality of dignity, good order, impartiality, and the convenience and privacy of the voter. Those rules, at a minimum, shall include procedures to ensure that all the following occur:

- (1) The voting system remains secure throughout the period voting is being conducted.
- (2) Only properly voted official ballots are introduced into the voting system.
- (3) No official ballots leave the voting enclosure during the time voting is being conducted there.
- (4) All improperly voted official ballots are returned to the precinct officials and marked as spoiled.
- (5) Voters leave the voting place promptly after voting.
- (6) Voters not clearly eligible to vote in the precinct but who seek to vote there are given proper assistance in voting a provisional official ballot or guidance to another voting place where they are eligible to vote.
- (7) Information gleaned through the voting process that would be helpful to the accurate maintenance of the voter registration records is recorded and delivered to the county board of elections.
- (8) The registration records are kept secure.
- (9) Party observers are given access as provided by G.S. 163-45 to current information about which voters have voted.

"§ 163-166.8. Assistance to voters.

(a) Any registered voter qualified to vote in the election shall be entitled to assistance with entering and exiting the voting booth and in preparing ballots in accordance with the following rules:

- (1) Any voter is entitled to assistance from the voter's spouse, brother, sister, parent, grandparent, child, grandchild, mother-in-law, father-in-law, daughter-in-law, son-in-law, stepparent, or stepchild, as chosen by the voter.
- (2) A voter in any of the following four categories is entitled to assistance from a person of the voter's choice, other than the voter's employer or agent of that employer or an officer or agent of the voter's union:
 - a. A voter who, on account of physical disability, is unable to enter the voting booth without assistance.
 - b. A voter who, on account of physical disability, is unable to mark a ballot without assistance.
 - c. A voter who, on account of illiteracy, is unable to mark a ballot without assistance.
 - d. A voter who, on account of blindness, is unable to enter the voting booth or mark a ballot without assistance.

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(b) A qualified voter seeking assistance in an election shall, upon arriving at the voting place, request permission from the chief judge to have assistance, stating the reasons. If the chief judge determines that such assistance is appropriate, the chief judge shall ask the voter to point out and identify the person the voter desires to provide such assistance. If the identified person meets the criteria in subsection (a), the chief judge shall request the person indicated to render the assistance. The chief judge, one of the judges, or one of the assistants may provide aid to the voter if so requested, if the election official is not prohibited by subdivision (a)(2). Under no circumstances shall any precinct official be assigned to assist a voter qualified for assistance, who was not specified by the voter.

(c) A person rendering assistance to a voter in an election shall be admitted to the voting booth with the voter being assisted. The State Board of Elections shall promulgate rules governing voter assistance, and those rules shall adhere to the following guidelines:

- (1) The person rendering assistance shall not in any manner seek to persuade or induce any voter to cast any vote in any particular way.
- (2) The person rendering assistance shall not make or keep any memorandum of anything which occurs within the voting booth.
- (3) The person rendering assistance shall not, directly or indirectly, reveal to any person how the assisted voter marked ballots, unless the person rendering assistance is called upon to testify in a judicial proceeding for a violation of the election laws.

"§ 163-166.9. Curbside voting.

In any election or referendum, if any qualified voter is able to travel to the voting place, but because of age or physical disability and physical barriers encountered at the voting place is unable to enter the voting enclosure to vote in person without physical assistance, that voter shall be allowed to vote either in the vehicle conveying that voter or in the immediate proximity of the voting place. The State Board of Elections shall promulgate rules for the administration of this section.

"§ 163-166.10. Procedures after the close of voting.

The State Board of Elections shall promulgate rules for closing the voting place and delivering voting information to the county board of elections for counting, canvassing, and record maintenance. Those rules shall emphasize the need for the appearance as well as the reality of security, accuracy, participation by representatives of more than one political party, openness of the process to public inspection, and honesty. The rules, at a minimum, shall include procedures to ensure all of the following:

- (1) The return and accurate accounting of all official ballots, regular, provisional, voted, unvoted, and spoiled, according to the provisions of Article 15A of this Chapter.
- (2) The certification of ballots and voter-authorization documents by precinct officials of more than one political party.
- (3) The delivery to the county board of elections of registration documents and information gleaned through the voting process that would be helpful in the accurate maintenance of the voter registration records.

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- (4) The return to the county board of all issued equipment.
 - (5) The restoration of the voting place to the condition in which it was found."
- Section 4. This act becomes effective January 1, 2002.

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LEGISLATIVE PROPOSAL V: Election Rewrite -- 1.

BI

Committee: General Assembly
Date: January 24, 2001
Version: Legislative Proposal V

Introduced by: Election Laws Revision Com.
Summary by: William R. Gilkeson
Staff Attorney

1

2 **SUMMARY:** *Legislative Proposal V would rewrite the sections of the Election*
3 *Law dealing with setting up the official ballot, acquiring voting equipment,*
4 *and conducting the election at the voting place.*

5 **CURRENT LAW:** Chapter 163 of the General Statutes, the Election Law, was
6 last comprehensively rewritten in 1967, in response to the Election Laws
7 Revision Commission appointed in 1965. The statute contains Article 13, which
8 prescribes in detail the content of paper ballots to be counted by hand. It also
9 specifies in detail the furnishings and procedures for a voting place using hand-
10 counted paper ballots. By 2001, only three counties (Clay, Hyde, and Tyrrell)
11 used hand-counted paper ballots as their primary voting method. For ballot and
12 election-day procedures of the other 97 counties that use some kind of
13 mechanical or electronic voting system, there is Article 14, which gives the State
14 Board of Elections broad rulemaking authority to establish procedures.

15 Article 14 also gives the State Board of Elections the authority to approve the
16 types of voting systems that may be purchased by county or municipal boards of
17 elections.

18 **LEGISLATIVE PROPOSAL V:** Legislative Proposal V repeals both Articles
19 13 and 14 and merges their provisions into one new Article, 13A. The philosophy
20 of the draft is to remove the disparate treatment of hand-counted paper ballots
21 versus all other voting methods. Instead, the new statute would set general
22 principles that are technologically neutral. It would direct the State Board to
23 promulgate rules for different voting methods, guided by the general principles.

24 The new Article would be titled "Voting." It would be divided into three Parts:
25 "Definitions," "Ballots and Voting Systems," and "Procedures at the Voting
26 Place."

27 The Definitions Part defines several key terms that are used throughout the new
28 Article 13A, as well as the new Article 15A that would be created by Legislative
29 Proposal VI. "Official ballot" is a ballot that has been certified by the State Board
30 and produced by the county board. Only an official ballot may be voted and
31 counted. "Ballot item" is the segment of the ballot where the voter chooses a
32 referendum proposal or candidate or set of candidates for the same office or set of
33 offices. "Provisional official ballot" is a ballot voted and then placed in an
34 envelope that contains an affidavit signed by the voter as to that voter's identity
35 and qualifications. "Voting system," defined in current law as any voting method

1 other than hand-counted paper ballots, is broadened to include paper ballots are
2 any system of voting. *G.S. 163-165.*

3 The Ballots and Voting Systems Part gives the State Board of Elections authority
4 to certify the official ballot statewide and in every county. *G.S. 163-165.3.* The State
5 Board also has rulemaking authority based on technologically neutral guidelines.
6 The statute makes certain policy choices, some of which clarify current law and
7 some of which change it:

- 8 • County Financial Responsibility for Producing the Ballot. Currently, 97
9 counties must foot the bill for producing ballots. In the three counties that
10 rely on hand-counted paper ballots, the State pays for the State paper
11 ballots and the county pays for the rest. The bill standardizes the law by
12 making the county responsible for producing all ballots. *G.S. 163-165.3*
- 13 • Gender Neutrality of Candidates' Names on Ballots. Currently, the
14 candidate's name appears on the ballot the way the candidate listed it on
15 the notice of candidacy. Titles are not permitted, except that married
16 women may use "Mrs." and unmarried women may use "Miss." The
17 rewrite says simply that titles indicating rank, status, or position may not
18 be used. *G.S. 163-165.5.*
- 19 • Straight Ticket for All But the Presidency. Currently, the straight party
20 ticket is restricted in a number of ways for hand-counted paper ballots, but
21 less clearly for the 97 machine/electronic counties. The rewrite follows
22 the prevailing practice of the 97 counties, which is to count the straight
23 ticket for all but the presidential race. *G.S. 163-165.6.*
- 24 • Order of Names on Primary Ballot. Current law requires the rotation of
25 names on primary ballots in the 3 hand-counted paper counties, but does
26 not require it in the 97 other counties. A lawsuit settlement has resulted in
27 a compromise method. The rewrite says that in all counties, names in a
28 primary ballot item on that county's ballots shall be determined by random
29 selection. *G.S. 163-165.6.*

30 The provisions on acquisition of voting systems make the following changes:

- 31 • State Board Disapproval of Types, Makes, and Models. Current law gives
32 the State Board the authority to approval types of voting systems for
33 acquisition by a county. The rewrite would expand that authority to
34 approval of makes and models of voting systems. It would also expand it
35 to allow the State Board to disapprove a type, make, or model of voting
36 system already in use in a county. It would give the State Board authority
37 to set a process for discontinuance of a disapproved voting system in a
38 county. *G.S. 163-165.7.*
- 39 • No County Authority to Acquire a Disapproved Optical Scan System.
40 Current law allows the county board of commissioners to approve a
41 disapproved optical scan voting system, as long as the county board of
42 elections signs off. The rewrite repeals this exception to the general rule.
43 *G.S. 163-165.8.*

- 1 • No Municipal Board Authority to Acquire Voting System. The rewrite
2 repeals the authority given to municipal boards of elections to acquire
3 voting systems. This is consistent with the Commission's
4 recommendation in Legislative Proposal IV to abolish municipal boards
5 of elections.

6 The Procedures at the Voting Place Part give the State Board greater flexibility
7 to set up procedures at the polls for different voting systems and to allow county
8 boards to assign duties at the delegate duties to different precinct officials. *G.S. 163-*
9 *166.6.* In addition, the Part makes these changes:

- 10 • More Flexible Buffer Zone. Current law mandates a 50-foot buffer zone
11 around the voting place in which no one may "loiter out, congregate,
12 distribute campaign material, or do any electioneering." On the theory
13 that the rigid 50-foot limit may, given the arrangement of some voting
14 places, preclude any zone for electioneering, the rewrite allows the
15 county board flexibility in designing the buffer zone. It removes the
16 candidate's apparent right under current law to enter the buffer zone. The
17 rewrite also removes the language, constitutionally vulnerable according
18 to the American Civil Liberties Union, about "loitering and
19 congregating." *G.S. 163-166.4.*
- 20 • Extra Hour. Current law says the polls close at 7:30, but the county board
21 may keep them open an extra hour where voting machines are used. The
22 rewrite says the county board may keep the polls open an extra hour
23 anywhere in extraordinary circumstances. *G.S. 163-166.*

24 **EFFECTIVE DATE:** The bill would become effective January 1, 2002.

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- (4) 'Protest' means a complaint concerning the conduct of an election which, if supported by sufficient evidence, may require remedy by one or more of the following:
- a. A correction in the returns.
 - b. A discretionary recount as provided in G.S. 163-182.
 - c. A new election as provided in G.S. 163-182.8.

In addition to the definitions in this section, the definitions in Article 13A of this Chapter shall also apply to this Article.

"§ 163-182.1. Principles and rules for counting official ballots.

(a) General Principles That Shall Apply. -- The following general principles shall apply in the counting of official ballots, whether the initial count or any recount:

- (1) Only official ballots shall be counted.
- (2) No official ballot shall be rejected because of technical errors in marking it, unless it is impossible to determine the voter's choice.
- (3) If it is impossible to determine a voter's choice in a ballot item, the official ballot shall not be counted for that ballot item, but shall be counted in all other ballot items in which the voter's choice can be determined.
- (4) If an official ballot is marked in a ballot item with more choices than there are offices to be filled or propositions that may prevail, the official ballot shall not be counted for that ballot item, but shall be counted in all other ballot items in which there is no overvote and the voter's choice can be determined.
- (5) If an official ballot is rejected by a scanner or other counting machine, but human counters can determine the voter's choice, the official ballot shall be counted by hand and eye.
- (6) Write-in votes shall not be counted in party primaries or in referenda, but shall be counted in general elections if all of the following are true:
 - a. The write-in vote is written by the voter or by a person authorized to assist the voter pursuant to G.S. 163-166.8.
 - b. The write-in vote is not cast for a candidate who has failed to qualify under G.S. 163-123 as a write-in candidate.
 - c. The voter's choice can be determined.
- (7) Straight-party ticket and split-ticket votes shall be counted in general elections according to the following guidelines:
 - a. If a voter casts a vote for a straight-party ticket, that vote shall be counted for all the candidates of that party, other than President and Vice President, in the partisan ballot items on that official ballot unless the voter also votes in one or more of those ballot items for a candidate not of that party or for fewer than all the candidates of that party.
 - b. If a voter casts a vote for a straight-party ticket and also votes in a partisan ballot item for a candidate of another party, the official ballot shall be counted in that ballot item only for the individually marked candidate. In partisan ballot items where no mark is made for an

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individual candidate, the official ballot shall be counted for the candidates of the party whose straight ticket the voter voted.

- c. If a voter casts a vote for a straight-party ticket and also votes in a partisan multi-seat ballot item for fewer than all the candidates of that party, the official ballot shall be counted only for the candidates individually marked in that ballot item. In partisan ballot items where no mark is made for an individual candidate, the official ballot shall be counted for all the candidates of the party whose straight ticket the voter voted.
- d. If a voter casts a vote for a straight-party ticket and also casts a write-in vote in any partisan ballot item, the straight- party ticket vote shall not control the way the official ballot is counted in that ballot item. The following principles shall apply:
 - 1. If the write-in vote is proper under subdivision (6) of this subsection, that write-in candidate shall receive a vote.
 - 2. If the write-in vote is not proper under subdivision (6) of this subsection and no other candidate is individually marked in that ballot item, then no vote shall be counted in that ballot item.
 - 3. If the straight-ticket voter casts both write-in votes and individually marked votes for ballot candidates in a ballot item, then the write-in and individually marked votes shall be counted unless the write-in is not proper under subdivision (6) of this subsection or an overvote results. In any ballot item where a voter individually marks as many ballot candidates as there are offices to be filled and also writes in the name of an individual for whom votes are not proper under subdivision (6) of this subsection, there is an overvote and no votes in that ballot item shall be counted.

(b) Rules and Directions by State Board of Elections. -- The State Board of Elections shall promulgate rules where necessary to apply the principles in subsection (a) of this section to each voting system in use in the State. The rules shall prescribe procedures and standards for each type of voting system. Those procedures and standards shall be followed uniformly throughout the State in all places where that type of voting system is used. The State Board shall direct the county boards of elections in the application of the principles and rules in individual circumstances.

"§ 163-182.2. Initial counting of official ballots.

(a) The initial counting of official ballots shall be conducted according to the following principles:

- (1) Vote counting at the precinct shall occur immediately after the polls close and shall be continuous until completed.
- (2) Vote counting at the precinct shall be conducted with the participation of precinct officials of more than one political party. Vote counting at the county

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board of elections shall be conducted in the presence or under the supervision of board members of more than one party.

- (3) Any member of the public wishing to witness the vote count at any level shall be allowed to do so. No witness shall interfere with the orderly counting of the official ballots. Witnesses shall not participate in the official counting of official ballots.
- (4) Provisional official ballots shall be counted by the county board of elections before the canvass. If the county board finds that an individual voting a provisional official ballot is not eligible to vote in one or more ballot items on the official ballot, the board shall not count the official ballot in those ballot items, but shall count the official ballot in any ballot items for which the individual is eligible to vote.

(b) The State Board of Elections shall promulgate rules for the initial counting of official ballots. All election officials shall be governed by those rules. In promulgating those rules, the State Board shall adhere to the following guidelines:

- (1) For each voting system used, the rules shall specify the role of precinct officials and of the county board of elections in the initial counting of official ballots.
- (2) The rules shall provide for accurate unofficial reporting of the results from the precinct to the county board of elections with reasonable speed on the night of the election.
- (3) The rules shall provide for the prompt and secure transmission of official ballots from the voting place to the county board of elections.

The State Board shall direct the county boards of elections in the application of the principles and rules in individual circumstances.

"§ 163-182.3. Responsibility of chief judge.

The chief judge of each precinct shall be responsible for the adherence of the precinct officials to the State Board rules for counting official ballots.

"§ 163-182.4. Jurisdiction for certain ballot items.

(a) Jurisdiction of County Board of Elections. -- As used in this Article, the county board of elections shall have jurisdiction over the following:

- (1) Offices of that county, including clerk of superior court and register of deeds.
- (2) Membership in either house of the General Assembly from a district lying entirely within that county.
- (3) Offices of municipalities located in two or more counties.
- (4) Referenda in which only residents of that county are eligible to vote.

(b) Jurisdiction of State Board of Elections. -- As used in this Article, the State Board of Elections shall have jurisdiction over the following:

- (1) National offices.
- (2) State offices.
- (3) District offices (including General Assembly seats) in which the district lies in more than one county.

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(4) Superior court judge, district court judge, and district attorney, regardless of whether the district lies entirely in one county or in more than one county.

(5) Referenda in which residents of more than one county are eligible to vote.

(c) For the purposes of this Article, having jurisdiction shall mean that the appropriate board shall do all of the following with regard to the ballot item:

(1) Canvass for the entire electorate for the ballot item.

(2) Prepare abstracts or composite abstracts for the entire electorate for the ballot item.

(3) Issue certificates of nomination and election.

"§ 163-182.5. Canvassing votes.

(a) The Canvass. – As used in this Article, the term `canvass' means the entire process of determining that the votes have been counted and tabulated correctly, culminating in the authentication of the official election results. The board of elections conducting a canvass has authority to send for papers and persons and to examine them and pass upon the legality of disputed ballots.

(b) Canvassing by County Board of Elections. -- The county board of elections shall meet at 11 a.m. on the third day (Sunday excepted) after every election to complete the canvass of votes cast and to authenticate the count in every ballot item in the county by determining that the votes have been counted and tabulated correctly. If, despite due diligence by election officials, the initial counting of all the votes has not been completed by that time, the county board may hold the canvass meeting a reasonable time thereafter. The canvass meeting shall be at the county board of elections office, unless the county board, by unanimous vote of all its members, designates another site within the county. The county board shall examine the returns from precincts, from absentee official ballots, and from provisional official ballots and shall canvass.

(c) Canvassing by State Board of Elections. -- After each general election, the State Board of Elections shall meet at 11:00 A.M. on the Tuesday three weeks after election day to complete the canvass of votes cast in all ballot items within the jurisdiction of the State Board of Elections and to authenticate the count in every ballot item in the county by determining that the votes have been counted and tabulated correctly. After each primary, the State Board shall fix the date of its canvass meeting. If, by the time of its scheduled canvass meeting, the State Board has not received the county canvasses, the State Board may adjourn for not more than 10 days to secure the missing abstracts.

"§ 163-182.6. Abstracts.

(a) Abstracts to Be Prepared by County Board of Elections. – As soon as the county canvass has been completed, the county board of elections shall prepare abstracts of all the ballot items in a form prescribed by the State Board of Elections. The county board shall prepare those abstracts in triplicate originals. The county board shall retain one of the triplicate originals, and shall distribute one each to the clerk of superior court for the county and the State Board of Elections. The State Board of Elections shall forward the original abstract it receives to the Secretary of State.

(b) Composite Abstracts to Be Prepared by the State Board of Elections. – As soon as the State canvass has been completed, the State Board shall prepare composite abstracts of all those

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ballot items. It shall prepare those composite abstracts in duplicate originals. It shall retain one of the originals and shall send the other original to the Secretary of State.

(c) Duty of the Secretary of State. -- The Secretary of State shall maintain the certified copies of abstracts received from the county and State boards of elections. The Secretary shall keep the abstracts in a form readily accessible and useful to the public.

(d) Forms by State Board of Elections. -- The State Board of Elections shall prescribe forms for all abstracts. Those forms shall be uniform and shall, at a minimum, state the name of each candidate and the office sought and each referendum proposal, the number of votes cast for each candidate and proposal, the candidate or proposal determined to have prevailed, and a statement authenticating the count.

§ 163-182.7. Ordering recounts.

(a) Discretionary Recounts. -- The county board of elections or the State Board of Elections may order a recount when necessary to complete the canvass in an election. The county board may not order a recount where the State Board of Elections has already denied a recount to the petitioner.

(b) Mandatory Recounts for Ballot Items Within the Jurisdiction of the County Board of Elections. -- In a ballot item within the jurisdiction of the county board of elections, a candidate shall have the right to demand a recount of the votes if the difference between the votes for that candidate and the votes for a prevailing candidate is not more than one percent (1%) of the total votes cast in the ballot item, or in the case of a multi-seat ballot item not more than one percent (1%) of the votes cast for those two candidates. The demand for a recount must be made in writing and must be received by the county board of elections by noon on the fourth day after the canvass. The recount shall be conducted under the supervision of the county board of elections.

(c) Mandatory Recounts for Ballot Items Within the Jurisdiction of the State Board of Elections. -- In a ballot item within the jurisdiction of the State Board of Elections, a candidate shall have the right to demand a recount of the votes if the difference between the votes for that candidate and the votes for a prevailing candidate are not more than the following:

- (1) For a nonstatewide ballot item, one percent (1%) of the total votes cast in the ballot item, or in the case of a multi-seat ballot item one percent (1%) of the votes cast for those two candidates.
- (2) For a statewide ballot item, one half of one percent (0.5%) of the votes cast in the ballot item, or in the case of a multi-seat ballot item one half of one percent (0.5%) of the votes cast for those two candidates, or 10,000 votes, whichever is less.

The demand for a recount must be in writing and must be received by the State Board of Elections by noon on the second Wednesday after the election. If on that Wednesday the available returns show a candidate not entitled to a mandatory recount, but the Executive Secretary-Director determines subsequently that the margin is within the threshold set out in this subsection, the Executive Secretary-Director shall notify the eligible candidate immediately and that candidate shall be entitled to a recount if that candidate so demands within forty-eight (48) hours of notice. The recount shall be conducted under the supervision of the State Board of Elections.

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(d) Rules for Conducting Recounts. -- The State Board of Elections shall promulgate rules for conducting recounts. Those rules shall be subject to the following guidelines:

- (1) The rules shall specify, with respect to each type of voting system, when and to what extent the recount shall consist of machine recounts and hand-to-eye recounts.
- (2) The rules shall provide guidance in interpretation of the voter's choice.
- (3) The rules shall specify how the goals of multi-partisan participation, opportunity for public observation, and good order shall be balanced.

"§ 163-182.8. Determining result in case of a tie.

If the count, upon completion of canvass by the proper board of elections, shows a tie vote other than in a primary, the tie shall be resolved as follows:

- (1) If more than 5,000 voters cast official ballots in the ballot item, the State Board of Elections shall order a new election in which only the candidates or positions tied will be on the official ballot. The State Board of Elections shall set the schedule for publication of the notice, preparation of absentee official ballots, and the other actions necessary to conduct the election. Eligibility to vote in the new election shall be determined by the voter's eligibility at the time of the new election.
- (2) If 5,000 or fewer voters cast official ballots in the ballot item, the board of elections with jurisdiction to certify the election shall break the tie by random selection.

"§ 163-182.9. Filing an election protest.

(a) Who May File a Protest With County Board. -- A protest concerning the conduct of an election may be filed with the county board of elections by any registered voter who was eligible to vote in the election or by any person who was a candidate for nomination or election in the election.

(b) How Protest May Be Filed. -- The following principles shall apply to the filing of election protests with the county board of elections:

- (1) The protest shall be in writing and shall be signed by the protester. It shall include the protester's name, address, and telephone number and a statement that the person is a registered voter in the jurisdiction or a candidate.
- (2) The protest shall state whether the protest concerns the manner in which votes were counted and results tabulated or concerns some other irregularity.
- (3) The protest shall state what remedy the protester is seeking.
- (4) The timing for filing a protest shall be as follows:
 - a. If the protest concerns the manner in which votes were counted or results tabulated, the protest shall be filed before the beginning of the county board of election's canvass meeting.
 - b. If the protest concerns the manner in which votes were counted or results tabulated and the protest states good cause for delay in filing, the protest may be filed until 6:00 P.M. on the second day after the county board of elections has completed its canvass and declared the results.

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- c. If the protest concerns an irregularity other than vote-counting or result-tabulation, the protest shall be filed no later than 6:00 P.M. on the second day after the county board has completed its canvass and declared the results.

(c) State Board to Prescribe Forms. -- The State Board of Elections shall prescribe forms for filing protests.

"§ 163-182.10. Consideration of protest by county board of elections.

(a) Preliminary Consideration. -- The following principles shall apply to the initial consideration of election protests by the county board of elections:

- (1) The county board shall, as soon as possible after the protest is filed, meet to determine whether the protest substantially complies with G.S. 163-182.9 and establishes probable cause to believe that a violation of election law or irregularity or misconduct has occurred. If the board determines that one or both requirements is not met, the board shall dismiss the protest. The board shall notify both the protester and the State Board of Elections. The protester may file an amended protest or may appeal to the State Board. If the board determines that both requirements are met, it shall schedule a hearing.
- (2) If a protest was filed before the canvass and concerns the counting and tabulating of votes, the county board shall resolve the protest before the canvass is completed. If necessary to provide time to resolve the protest, the county board may recess the canvass meeting, but shall not delay the completion of the canvass for more than three days unless approved by the State Board of Elections. Resolution of the protest shall not delay the canvass of ballot items unaffected by the protest. The appeal of a dismissal shall not delay the canvass.
- (3) If a protest concerns an irregularity other than the counting or tabulating of votes, that protest shall not delay the canvass.

(b) Notice of Hearing. – The county board shall give notice of the protest hearing to the protester, any candidate likely to be affected, any election official alleged to have acted improperly, and those persons likely to have a significant interest in the resolution of the protest. Each person given notice shall also be given a copy of the protest or a summary of its allegations. The manner of notice shall be as follows:

- (1) If the protest concerns the manner in which the votes were counted or the results tabulated, the protester shall be told at the time of filing that the protest will be heard at the time of the canvass. Others shall be notified as far in advance of the canvass as time permits.
- (2) If the protest concerns a matter other than the manner in which votes were counted or results tabulated, the county board shall comply with rules to be promulgated by the State Board of Elections concerning reasonable notice of the hearing.

Failure to comply with the notice requirements in this subsection shall not delay the holding of a hearing nor invalidate the results if it appears reasonably likely that all interested persons were aware of the hearing and had an opportunity to be heard.

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(c) Conduct of Hearing. -- The following principles shall apply to the conduct of a protest hearing before the county board of elections:

- (1) The county board may allow evidence to be presented at the hearing in the form or affidavits or it may examine witnesses. The chair or any two members of the board may subpoena witnesses or documents. Each witness must be placed under oath before testifying.
- (2) The county board may receive evidence at the hearing from any person with information concerning the subject of the protest. The person who made the protest shall be permitted to present allegations and introduce evidence at the hearing. Any other person to whom notice of hearing was given, if present, shall be permitted to present evidence. The board may allow evidence by affidavit. The board may permit evidence to be presented by a person to whom notice was not given, if the person apparently has a significant interest in the resolution of the protest that is not adequately represented by other participants.
- (3) The hearing shall be recorded by a reporter or by mechanical means, and the full record of the hearing shall be preserved by the county board until directed otherwise by the State Board.

(d) Findings of Fact and Conclusions of Law by County Board. -- The county board shall make a written decision on each protest which shall state separately each of the following:

- (1) Findings of Fact. The findings of fact shall be based exclusively on the evidence and on matters officially noticed. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting them.
- (2) Conclusions of Law. The conclusions the county board may state, and their consequences for the board's order, are as follows:
 - a. 'The protest should be dismissed because it does not substantially comply with G.S. 163-182.9.' If the board makes this conclusion, it shall order the protest dismissed.
 - b. 'The protest should be dismissed because there is not substantial evidence of a violation of the election law or other irregularity or misconduct.' If the county board makes this conclusion, it shall order the protest dismissed.
 - c. 'The protest should be dismissed because there is not substantial evidence of any violation, irregularity, or misconduct sufficient to cast doubt on the results of the election.' If the county board makes this conclusion, it shall order the protest dismissed.
 - d. 'There is substantial evidence to believe that a violation of the election law or other irregularity or misconduct did occur, and might have affected the outcome of the election, but the board is unable to finally determine the effect because the election was a multi-county election.' If the county board makes this conclusion, it shall order that the protest and the county board's decision be sent to the State Board for action by it.

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- e. 'There is substantial evidence to believe that a violation of the election law or other irregularity or misconduct did occur and that it was sufficiently serious to cast doubt on the apparent results of the election.' If the county board makes this conclusion, it may order any of the following as appropriate:
1. That the vote total as stated in the precinct return or result of the canvass be corrected and new results declared.
 2. That votes be recounted.
 3. That the protest and the county board's decision be sent to the State Board for action by it.
 4. Any other action within the authority of the county board.

- (3) An Order. Depending on the conclusion reached by the county board, its order shall be as directed in subdivision (c)(2). If the county board is not able to determine what law is applicable to the Findings of Fact, it may send its Findings of Fact to the State Board for it to determine the applicable law.

(e) Rules by State Board of Elections. -- The State Board of Elections shall promulgate rules providing for adequate notice to parties, scheduling of hearings, and the timing of deliberations and issuance of decision.

"§ 163-182.11. Appeal of a Protest Decision by the County Board to the State Board of Elections.

(a) Notice and Perfection of Appeal. -- The decision by the county board of elections on an election protest may be appealed to the State Board of Elections by any of the following:

- (1) The person who filed the protest.
- (2) A candidate or elected official adversely affected by the county board's decision.
- (3) Any other person who participated in the hearing and has a significant interest adversely affected by the county board's decision.

Written notice of the appeal must be given to the county board within 24 hours after the county board files the written decision at its office. The appeal to the State Board must be in writing. The appeal must be delivered or deposited in the mail, addressed to the State Board, by the appropriate one of the following: (i) the end of the second day after the day the decision was filed by the county board in its office, if the decision concerns a first primary; or (ii) the end of the fifth day after the day the decision was filed in the county board office, if the decision concerns an election other than a first primary.

The State Board shall prescribe forms for filing appeals from the county board.

(b) Consideration of Appeal by State Board. -- In its consideration of an appeal from a decision of a county board of elections on a protest, the State Board of Elections may do any of the following:

- (1) Decide the appeal on the basis of the record from the county board, as long as the county board has made part of the record a transcript of the evidentiary hearing.

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- (2) Request the county board or any interested person to supplement the record from the county board, and then decide the appeal on the basis of that supplemented record.
- (3) Receive additional evidence and then decide the appeal on the basis of the record and that additional evidence.
- (4) Hold its own hearing on the protest and resolve the protest on the basis of that hearing.
- (5) Remand the matter to the county board for further proceedings in compliance with an order of the State Board.

The State Board shall give notice of its decision as required by G.S. 163-182.14, and may notify the county board and other interested persons in its discretion.

"§ 163-182.12. Authority of State Board of Elections over protests.

The State Board of Elections may consider protests that were not filed in compliance with G.S. 163-182.9, may initiate and consider complaints on its own motion, may intervene and take jurisdiction over protests pending before a county board, and may take any other action necessary to assure that an election is determined without taint of fraud or corruption.

"§ 163-182.13. New Elections.

(a) When State Board May Order New Election. -- The State Board of Elections may order a new election, upon agreement of at least four of its members, in the case of any one or more of the following:

- (1) Ineligible voters sufficient in number to change the outcome of the election were allowed to vote in the election, and it is not possible from examination of the official ballots to determine how those ineligible voters voted and to correct the totals.
- (2) Eligible voters sufficient in number to change the outcome of the election were improperly prevented from voting.
- (3) Other irregularities affected a sufficient number of votes to change the outcome of the election.
- (4) Irregularities or improprieties occurred to such an extent that, although it is not possible to determine whether those irregularities or improprieties affected the outcome of the election, they taint the results of the entire election and cast doubt on its fairness.

(b) State Board to Set Procedures. -- The State Board of Elections shall determine when a new election shall be held and shall set the schedule for publication of the notice, preparation of absentee official ballots, and the other actions necessary to conduct the election.

(c) Eligibility to Vote in New Election. -- Eligibility to vote in the new election shall be determined by the voter's eligibility at the time of the new election, except that in a primary, no person who voted in the initial primary of one party shall vote in the new election in the primary of another party. The State Board of Elections shall promulgate rules to effect the provisions of this subsection.

(d) Jurisdiction in Which New Election Held. -- The new election shall be held in the entire jurisdiction in which the original election was held.

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(e) Which Candidates to Be on Official Ballot. -- All the candidates who were listed on the official ballot in the original election shall be listed in the same order on the official ballot for the new election, except in either of the following:

- (1) If a candidate dies or otherwise becomes ineligible between the time of the original election and the new election, that candidate may be replaced in the same manner as if the vacancy occurred before the original election.
- (2) If the election is for a multi-seat office, and the irregularities could not have affected the election of one or more of the leading vote-getters, the new election, upon agreement of at least four members of the State Board, may be held among only those remaining candidates whose election could have been affected by the irregularities.

(f) Tie Votes. – The State Board of Elections shall order a new election if ineligible voters voted in an election and it is possible to determine from the official ballots the way in which those votes were cast and to correct the results, and consequently the election ends in a tie, the provisions of G.S. 163-182.8 concerning tie votes shall apply.

"§ 163-182.14. Appeal of a final decision to Superior Court.

A copy of the final decision of the State Board of Elections on an election protest shall be served on the parties personally or by certified mail. A decision to order a new election is considered a final decision for purposes of seeking review of the decision. An aggrieved party has the right to appeal the final decision to Wake County Superior Court within 10 days of the date of service.

After the decision by the State Board of Elections has been served on the parties, the certification of nomination or election or the results of the referendum shall issue pursuant to G.S. 163-182.15 unless an appealing party obtains a stay of the certification from the Superior Court of Wake County within 10 days after the date of service. The court shall not issue a stay of certification unless the petitioner shows the court that the petitioner has appealed the decision of the State Board of Elections, that the petitioner is an aggrieved party, that the petitioner is likely to prevail, and that the results of the election would be changed in the petitioner's favor. Mere irregularities in the election which would not change the results of the election shall not be sufficient for the court to issue a stay of certification.

"§ 163-182.15. Certificate of nomination or election, or certificate of the results of a referendum.

(a) Issued by County Board of Elections. – In ballot items within the jurisdiction of the county board of elections, the county board shall issue a certificate of nomination or election, or a certificate of the results of the referendum, as appropriate. The certificate shall be issued by the county board five days after the completion of the canvass pursuant to G.S. 163-182.5, unless there is an election protest pending. If there is an election protest, the certificate of nomination or election or the certificate of the result of the referendum shall be issued in one of the following ways, as appropriate:

- (1) The certificate shall be issued five days after the protest is dismissed or denied by the county board of elections, unless that decision has been appealed to the State Board of Elections.

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(2) The certificate shall be issued 10 days after the final decision of the State Board, unless the State Board has ordered a new election or the issuance of the certificate is stayed by the Wake County Superior Court pursuant to G.S. 163-182.14.

(3) If the decision of the State Board has been appealed to the Wake County Superior Court and the court has stayed the certification, the certificate shall be issued five days after the entry of a final order in the case in the Wake County Superior Court, unless that court or an appellate court orders otherwise.

(b) Issued by State Board of Elections. – In ballot items within the jurisdiction of the State Board of Elections, the State Board of Elections shall issue a certificate of nomination or election, or a certificate of the results of the referendum, as appropriate. The certificate shall be issued by the State Board five days after the completion of the canvass pursuant to G.S. 163-182.5, unless there is an election protest pending. If there is an election protest, the certificate of nomination or election or the certificate of the result of the referendum shall be issued in one of the following ways, as appropriate:

(1) The certificate shall be issued 10 days after the final decision of the State Board on the election protest, unless the State Board has ordered a new election or the issuance of the certificate is stayed by the Wake County Superior Court pursuant to G.S. 163-14.

(2) If the decision of the State Board has been appealed to Wake County Superior Court and the court has stayed the certification, the certificate shall be issued five days after the entry of a final order in the case in Wake County Superior Court, unless that court or an appellate court orders otherwise.

(c) Copy to Secretary of State. – The State Board of Elections shall provide to the Secretary of State a copy of each certificate of nomination or election, or certificate of the results of a referendum, issued by it.

"§ 163-182.16. Governor to issue commissions for certain offices.

Upon receiving from the Secretary of State notice that a certificate of election has been issued for any of the following offices, the Governor shall provide to each such elected official a commission attesting to that person's election:

(1) Members of the United States House of Representatives.

(2) Justices, Judges, and District Attorneys of the General Court of Justice.

"§ 163-182.17. Summary of officials' duties under this Article.

(a) This Section a Summary. -- The provisions of this section provide a non-exclusive summary of the duties given to officials under this Article. The legal duty is contained, not in this section, but in the other sections of this Article.

(b) Duties of the Precinct Officials. -- Precinct officials, in accordance with rules of the State Board of Elections and under the supervision of the county board of elections, shall perform all of the following:

(1) Count votes when votes are required to be counted at the voting place. G.S. 163-182.2.

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- (2) Make an unofficial report of returns to the county board of elections. G.S. 163-182.2.
- (3) Certify the integrity of the vote and the security of the official ballots at the voting place. G.S. 163-182.2.
- (4) Return official ballots and equipment to the county board of elections. G.S. 163-182.2.

(c) Duties of the County Board of Elections. -- The county board of elections, in accordance with rules of the State Board of Elections, shall perform all of the following:

- (1) Count absentee and provisional official ballots and other official ballots required to be initially counted by the county board of elections. G.S. 163-182.2.
- (2) Canvass results in all ballot items on the official ballot in the county. G.S. 163-182.5.
- (3) Order a recount in any ballot item on the official ballot in the county, where necessary to complete the canvass, and where not prohibited from doing so. G.S. 163-182.7.
- (4) Conduct any recount that has been ordered by the county board of elections or the State Board of Elections or that has been properly demanded in accordance with G.S. 163-182.7(b).
- (5) Conduct hearings in election protests as provided in G.S. 163-182.10.
- (6) Prepare abstracts of returns in all the ballot items in the county. G.S. 163-182.6.
- (7) Retain one original abstract and distribute the other two originals as follows:
 - a. One to the clerk of superior court in the county.
 - b. One to the State Board of Elections. G.S. 163-182.6.
- (8) Issue a certificate of nomination or election or a certificate of the results of a referendum in each ballot item within the jurisdiction of the county board of elections. Provide a copy of the certificate to the clerk of court. G.S. 163-182.15.

(d) Duties of the State Board of Elections. -- The State Board of Elections shall perform all the following:

- (1) Promulgate rules as directed in this Article. G.S. 163-182.1, 163-182.2, 163-182.7, 163-182.10, and 163-182.13.
- (2) Provide supervisory direction to the county boards of elections as provided in this Article. G.S. 163-182.1 and 163-182.2.
- (3) Canvass the results in ballot items within the jurisdiction of the State Board of Elections. G.S. 163-182.5.
- (4) Order and supervise a recount in any ballot item within the jurisdiction of the State Board of Elections, where necessary to complete the canvass. G.S. 163-182.7.
- (5) Hear and decide appeals from decisions of county boards of elections in election protests. G.S. 163-182.11
- (6) Order new elections in accordance with G.S. 163-182.15.
- (7) Prepare, in duplicate originals, composite abstracts of ballot items within the jurisdiction of the State Board of Elections. G.S. 163-182.6.

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- (8) Retain one original of the composite abstract and deliver to the Secretary of State the other original composite abstract of the results of ballot items within the jurisdiction of the State Board of Elections. G.S. 163-182.6.
- (9) Certify the results of any election within the jurisdiction of the State Board of Elections and provide a copy to the Secretary of State. G.S. 163-182.15.
- (e) Duties of the Secretary of State. -- The Secretary of State retain and compile in a useful form all the abstracts and returns provided by the county boards of elections and the State Board of Elections. G.S. 163-182.6.
- (f) Duty of the Governor. -- The Governor shall issue a commission to any person elected to an office listed in G.S. 163-182.17 upon notification from the Secretary of State that a certificate of election has been issued to the person. G.S. 163-182.17.

SECTION 4. This act becomes effective January 1, 2002.

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LEGISLATIVE PROPOSAL VI: Election Rewrite -- 2.

Committee: General Assembly
Date: January 24, 2001
Version: Legislative Proposal VI

Introduced by: Election Laws Revision Com.
Summary by: William R. Gilkeson
Staff Attorney

SUMMARY: *Legislative Proposal VI would rewrite the sections of the Election Law dealing with counting official ballots, canvassing votes, and deciding election protests.*

CURRENT LAW: Chapter 163 of the General Statutes, the Election Law, was last comprehensively rewritten in 1967, in response to the Election Laws Revision Commission appointed in 1965. The statute contains Article 15, which directs precinct officials and county boards of elections in counting ballots at the precinct, and canvassing votes, preparing abstracts, and certifying results at the county level. It also contains Article 16, which deals with the same functions at the State level. Article 16 is written on the assumption that ballot counting means paper ballots counted by hand at the precinct level. The Article contains specific procedures for precinct officials to do the hand counting: i.e., stacking the ballots in certain piles on a table, etc. At the turn of the century, most of the ballot counting done at the precinct is done by machine, and a great deal of the initial counting of ballots (e.g., provisional ballots) is done at the county board level.

The law contains the guiding principle that the voter's intent shall be followed in counting votes wherever it can be, and no ballot or part of ballot shall be discarded for technical errors if the voter's intent can be determined.

Outside Articles 15 and 16 are important related provisions. Article 3 contains the authority of the State Board of Elections to order new elections. And NCAC 08:2.0001 et seq. contain rules about the conduct of election protests. G.S. 163-22 gives the State Board authority to promulgate rules for mandatory recounts, but the rulemaking authority for discretionary recounts is less clear.

LEGISLATIVE PROPOSAL VI: Legislative Proposal VI repeals Articles 15 and 16, as well as 163-22.1, the new-election section, and merges their provisions into a new Article 15A. The approach of the bill, somewhat different than that of Legislative Proposal V, is to set out principles for counting ballots and give the State Board of Elections not only rulemaking authority but also authority to direct the county boards in the application of the rules in individual circumstances. In some instances, e.g., election protests, what were administrative rules are elevated to the level of statute.

The bill makes the following changes:

- Initial Counting of Ballots. The bill introduces the concept of "initial counting" of ballots, whether done at the precinct or at the county board of elections. It contains the principle that the voter's choice shall be honored where it can be determined. It

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applies that principle to provisional ballots, saying that they shall be counted for ballot items where the voter was eligible to vote, even if the county board determines the voter was not eligible to vote part of the ballot. *G.S. 163-182.2.*

- Election Protests. The bill essentially places the procedure for protesting an election, now set in rule, and puts it in statute. The rules give protesters a time frame for filing their protest with the county board of elections, give the county board a menu of ways to resolve a protest, and provide for appeal to the State Board and the Wake County Superior Court. *G.S. 163-182.9 through -182.12.*
- Recounts. The bill collects the provisions about recounts into one statutory section. It gives the State Board the authority to promulgate rules about the conduct of recounts, whether ordered because of a close margin or for some other reason. It specifies that those rules shall guide boards of elections on when and to what extent to conduct hand-to-eye recounts. It says the rules shall provide guidance in interpretation of the voter's choice. *G.S. 163-182.7.*
- Tie Votes. The rewrite replaces the current variety of resolutions to tie votes in general elections with this rule: If the tie was in an election with more than 5,000 voters, there shall be a new election; if 5,000 or less, the tie is broken by a random selection between the tied candidates. *G.S. 163-182.8.*
- New Elections. The rewrite moves the new-election provisions from Article 3 to Article 15A. The rewrite clarifies that, regardless of the reason for the new election, it may be ordered only by a vote of at least 4 of the 5 members of the State Board. The rewrite also addresses issues on which the current statute is silent: Who may vote in the new election? The rewrite says whoever is eligible at the time of the new election, except that the State Board must promulgate rules to prevent someone who voted in a primary of one party from voting in a new-election primary of the other party. Must the new election be held in the entire jurisdiction of the initial election? The rewrite says yes. Which candidates must be on the ballot in the new election? The rewrite says all the candidates from the first election, except that a vacancy by death or disqualification may be filled as before the original election, and in the case of a multi-seat office, the State Board by a vote of 4 may limit the new election to the affected candidates. Also a new election for a tie includes only the tied candidates. *G.S. 163-182.13.*
- Certifications. The rewrite changes slightly the duties for issuing certificates of election for higher offices. Currently the State Board certifies the result to the Secretary of State, who must issue a certificate to the elected person on demand. The rewrite has the State Board issuing the certificate to the candidate, with the Secretary of State retaining a record-keeping duty for abstracts of results. *G.S. 163-182.6.*

EFFECTIVE DATE: The bill would become effective January 1, 2002.